16D C.J.S. Constitutional Law VIII XXII I Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

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16D C.J.S. Constitutional Law § 2201

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

1. Schools and Education, General Considerations

§ 2201. Schools and education, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4190 to 4228

The right to an education is a property or liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The right to an education is a property or liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution[1] although that interest does not necessarily encompass every facet of the educational program.[2] While the Fourteenth Amendment forbids states to prohibit attendance at nonpublic schools, it does not preclude reasonable, nondiscriminatory regulation designed to advance legitimate secular interests.[3]

The State may, without violating the due process guaranty, provide for the establishment and regulation of a public school system,[4] including regulations with respect to the admission and attendance of pupils or students.[5] Generally, a public school is required to operate reasonably with due process when dealing with the fundamental rights of citizens.[6] However, racial segregation in the public schools constitutes a denial of due process.[7]

Blind persons.

Due process is not denied by a refusal to consider blind persons as teachers or administrators in a school system.[8] However, the refusal to permit a blind person to take a teachers' examination because of blindness has been found to violate due process by subjecting the teacher to an irrebuttable presumption that blindness has made the teacher incompetent to teach sighted students.[9]

Parental rights.

Parental rights are not absolute in the public school context and can be subject to reasonable regulation without violating parents' due process rights.[10] Circumstances may exist in which school authorities, in order to maintain order and a proper educational atmosphere in the exercise of the police power, may impose standards of conduct on students that differ from those approved by some parents, and should the school policies conflict with the parents' liberty interest, the policies may prevail if they are tied to a compelling interest. The level of interference required to find a conflict between the school district's policy and the parents' due process liberty interests may vary depending on the significance of the subject at issue; the threshold for finding a conflict will not be as high when the school district's actions strike at the heart of parental decision-making authority on matters of the greatest importance.[11]

Home schooling.

There is no absolute constitutional right to home school one's children.[12] Parents do not have a fundamental right to direct their children's secular education free of reasonable regulation requiring the application of the strict scrutiny standard under the Fourteenth Amendment; on the contrary, the State may reasonably regulate education, including the imposition of teacher certification and curricular requirements on home school programs, in order to advance the legitimate interest of compulsory education.[13]

CUMULATIVE SUPPLEMENT

Cases:

Although state may not be constitutionally obligated to establish and maintain public school system, once it has done so, state is constrained to recognize student's legitimate entitlement to public education as property interest that is protected by Due Process Clause. U.S.C.A. Const.Amend. 14. Stevenson v. Blytheville School Dist. #£5, 800 F.3d 955 (8th Cir. 2015).

The Due Process Clause does not provide a fundamental parental right to determine the bathroom policies of the public schools to which parents may send their children, either independent of the parental right to direct the upbringing and education of their children or encompassed by it. U.S. Const. Amend. 14. Parents for Privacy v. Barr, 949 F.3d 1210 (9th Cir. 2020).

The Hawaiian education provision of the State constitution was intended to require the State to institute a program that was reasonably calculated to revive the Hawaiian language, and thus, the State was constitutionally required to make all reasonable efforts to provide access to Hawaiian immersion education; the Constitutional Convention made clear that the framers intended the education provision to require the State to provide Hawaiian education program in public schools that was reasonably calculated to revive and preserve olelo Hawaii, and by doing so, they hoped to rectify the ill effects of the historic suppression of the language. Haw. Const. art. 10, § 4. Clarabal v. Department of Education, 145 Haw. 69, 446 P.3d 986 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Boynton v. Casey, 543 F. Supp. 995, 5 Ed. Law Rep. 885 (D. Me. 1982); Johnpoll v. Elias, 513 F. Supp. 430 (E.D. N.Y. 1980).

2 U.S.—Boynton v. Casey, 543 F. Supp. 995, 5 Ed. Law Rep. 885 (D. Me. 1982).

3 U.S.—In re U. S. ex rel. Missouri State High School Activities Ass'n, 682 F.2d 147, 5 Ed. Law Rep. 383 (8th Cir. 1982).

4 U.S.—Farrington v. T. Tokushige, 11 F.2d 710 (C.C.A. 9th Cir. 1926), aff'd, 273 U.S. 284, 47 S. Ct. 406, 71 L. Ed. 646 (1927).

Tex.—Marrs v. Mumme, 25 S.W.2d 215 (Tex. Civ. App. San Antonio 1930), writ denied, 120 Tex. 383, 40 S.W.2d 31 (1931).

As to the creation, alteration, and regulation of school districts, see § 2180.

5 N.Y.—Board of Ed. of Union Free School Dist. No. 3, Town of Eastchester v. Board of Ed. of City of Mount Vernon, 184 Misc. 303, 56 N.Y.S.2d 185 (Sup 1943), judgment modified on other grounds, 267 A.D. 871, 46 N.Y.S.2d 258 (2d Dep't 1944), judgment aff'd, 294 N.Y. 676, 60 N.E.2d 838 (1945).

S.C.—Moseley v. Welch, 218 S.C. 242, 62 S.E.2d 313 (1950).

Compulsory education

A statute that would require a parent to place a child in public school would be an unconstitutional deprivation of the parents' liberty rights to determine how their child should be educated.

Cal.—In re Carl R., 128 Cal. App. 4th 1051, 27 Cal. Rptr. 3d 612, 197 Ed. Law Rep. 324 (4th Dist. 2005), as modified on denial of reh'g, (May 25, 2005).

6 Mo.—P.L.S. ex rel. Shelton v. Koster, 360 S.W.3d 805, 277 Ed. Law Rep. 1173 (Mo. Ct. App. W.D. 2011), as modified on other grounds, (Jan. 31, 2012).

7 U.S.—Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).

As to racial segregation in public schools as constituting a denial of equal protection of the laws, see §§ 1291 to 1294.

8 U.S.—Upshur v. Love, 474 F. Supp. 332 (N.D. Cal. 1979).

Physical education instructor

Fla.—Zorick v. Tynes, 372 So. 2d 133 (Fla. 1st DCA 1979).

9 U.S.—Gurmankin v. Costanzo, 556 F.2d 184 (3d Cir. 1977).

10 U.S.—J.S. ex rel. Snyder v. Blue Mountain School Dist., 650 F.3d 915, 271 Ed. Law Rep. 656, 91 A.L.R.6th 687 (3d Cir. 2011); Littlefield v. Forney Independent School Dist., 268 F.3d 275, 158 Ed. Law Rep. 36 (5th Cir. 2001).

Immunization

The special protection of the Due Process Clause does not include parent's right to refuse to have his or her child immunized before attending public or private school where immunization is a precondition to attending school.

U.S.—Boone v. Boozman, 217 F. Supp. 2d 938, 169 Ed. Law Rep. 247 (E.D. Ark. 2002).

11 U.S.—J.S. ex rel. Snyder v. Blue Mountain School Dist., 650 F.3d 915, 271 Ed. Law Rep. 656, 91 A.L.R.6th 687 (3d Cir. 2011).

12 Cal.—Jonathan L. v. Superior Court, 165 Cal. App. 4th 1074, 81 Cal. Rptr. 3d 571, 235 Ed. Law Rep. 492 (2d Dist. 2008).

13 Mich.—People v. Bennett, 442 Mich. 316, 501 N.W.2d 106, 83 Ed. Law Rep. 752 (1993).

16D C.J.S. Constitutional Law § 2202

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

1. Schools and Education, General Considerations

§ 2202. Staff and faculty

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4197 to 4203, 4223(1) to 4223(7)

An individual does not relinquish his or her due process rights when the person assumes a position of employment with an academic institution.

A teacher or other employee does not relinquish his or her due process rights when the person assumes a position of employment with an academic institution,[1] and teachers have a significant private interest in retaining their public employment.[2] A tenured teacher's right to continued employment is a property right, for due process purposes,[3] and a state may not convey a property interest, such as tenure, and then arbitrarily terminate the holder's employment in violation of that interest.[4] The protection of due process is not limited to teachers with tenure,[5] and where no formal system of tenure exists, due process may be mandated nonetheless where state rules and understandings between the parties support a claim of entitlement to continued employment.[6] In addition, due process protection extends to teachers who are denied employment because of their exercise of a constitutionally guaranteed right.[7]

A public school teacher has no constitutionally protected property interest in remaining at the same school, teaching the same subjects, or working with the same colleagues, and therefore, a teacher's reassignment to a different school to teach different subjects does not violate the Due Process Clause.[8] Similarly, a professor has no property interest in his or her particular class assignments,[9] and a tenured state university professor does not have a procedural due process right to participate in research proposals of his or her choosing.[10]

A teacher is deprived of a liberty interest if the school authorities maintain an inaccurate personnel file, and since a teacher has a liberty interest in preserving his or her good name, reputation, honor, or integrity, any charge of misconduct calls into question his or her reputation in a constitutional sense.[11] Thus, for instance, although a high school band director has not been discharged and, in fact, receives tenure, a claim for injury to his or her reputation as result of false charges of sexual misconduct is cognizable under the due process clause of the state constitution.[12]

A ban on concurrent full-time employment may be upheld where there is a rational connection between the rule and a legitimate interest in insuring that full-time faculty members give priority to their teaching duties, in order to assure quality instruction,[13] and where it is not facially void for vagueness.[14] A hearing is not required in connection with the withholding of salary for the violation of such rule, however, in the absence of any questions of fact.[15]

Probationary and temporary teachers.

A probationary teacher is not deprived of any property interest by the mere extension of his or her probationary status.[16] Likewise, teachers working under temporary contracts are not afforded the due process protections of career teachers.[17]

Bodily integrity.

A school district employee has no protected right under the Due Process Clause to bodily integrity, requiring a school district to protect the employee from physical attack by a coworker.[18]

Maternity leave.

Because public school maternity leave rules directly affect one of the basic civil rights of persons, the Due Process Clause of the Fourteenth Amendment requires that such rules not needlessly, arbitrarily, or capriciously impinge upon this vital area of a teacher's constitutional liberty.[19] Thus, a mandatory maternity leave provision or rule compelling a teacher to quit her job without pay several months before the expected birth of a child and not allowing the teacher to return to work until sometime after the birth is violative of the Due Process Clause.[20]

Failure to receive tenure.

To be entitled to due process protections, a teacher is required to prove that the decision not to grant the teacher tenure deprives him or her of a liberty or property interest.[21] Although a failure to receive tenure may not benefit a teacher in his or her pursuit of other employment, it does not place such a stigma on the teacher as to deprive him or her of a liberty interest protected by due process.[22] However, a teacher who has satisfied the objective eligibility standard for tenure has a sufficient entitlement so that the teacher cannot be denied tenure on the basis of his or her competence without procedural due process.[23] To maintain a substantive due process claim, a teacher who has been denied tenure must demonstrate that the school board has made an unreasoned decision.[24]

Footnotes

1 U.S.—Johnson v. Cain, 430 F. Supp. 518 (N.D. Ala. 1977).
Ark.—Jasper School Dist. No. 1 of Newton County v. Cooper, 2014 Ark. 390, 441 S.W.3d 11, 310 Ed. Law Rep. 497 (2014).

2 Wash.—Giedra v. Mount Adams School Dist. No. 209, 126 Wash. App. 840, 110 P.3d 232, 197 Ed. Law Rep. 829 (Div. 3 2005).

3 Ala.—Taylor v. Huntsville City Bd. of Educ., 143 So. 3d 219, 307 Ed. Law Rep. 562 (Ala. Civ. App. 2013), cert. denied, (Jan. 10, 2014).
Ill.—Kimble v. Illinois State Bd. of Educ., 2014 IL App (1st) 123436, 384 Ill. Dec. 73, 16 N.E.3d 169, 308 Ed. Law Rep. 1113 (App. Ct. 1st Dist. 2014).
Ind.—Smith v. Board of School Trustees of Monroe County Community School Corp., 991 N.E.2d 581, 295 Ed. Law Rep. 310 (Ind. Ct. App. 2013), transfer denied, 4 N.E.3d 1187 (Ind. 2014).

4 U.S.—Harbaugh v. Board of Educ. of City of Chicago, 716 F.3d 983, 293 Ed. Law Rep. 716 (7th Cir. 2013).
Cal.—DeYoung v. Commission on Professional Competence of the Hueneme Elementary School District, 228 Cal. App. 4th 568, 175 Cal. Rptr. 3d 383, 307 Ed. Law Rep. 348 (2d Dist. 2014).
Tenn.—Thompson v. Memphis City Schools Bd. of Educ., 395 S.W.3d 616, 291 Ed. Law Rep. 906 (Tenn. 2012).

5 U.S.—McDonald v. Mims, 577 F.2d 951 (5th Cir. 1978).

6 Mo.—Daniels v. Board of Curators of Lincoln University, 51 S.W.3d 1 (Mo. Ct. App. W.D. 2001).

7 Ind.—Tilton v. Southwest School Corp., 151 Ind. App. 608, 281 N.E.2d 117 (1972).

8 U.S.—Gordon v. Nicoletti, 84 F. Supp. 2d 304, 142 Ed. Law Rep. 169 (D. Conn. 2000).

9 La.—Johnson v. Southern University, 803 So. 2d 1140, 161 Ed. Law Rep. 721 (La. Ct. App. 1st Cir. 2001).

10 U.S.—Radolf v. University of Conn., 364 F. Supp. 2d 204, 197 Ed. Law Rep. 552 (D. Conn. 2005).

11 U.S.—Kendall v. Board of Ed. of Memphis City Schools, 627 F.2d 1 (6th Cir. 1980).

12 U.S.—Kadetsky v. Egg Harbor Tp. Bd. of Educ., 82 F. Supp. 2d 327, 141 Ed. Law Rep. 1052 (D.N.J. 2000).

13 U.S.—Kaufman v. Board of Trustees, Community College Dist. No. 508, 522 F. Supp. 90 (N.D. Ill. 1981).

14 U.S.—Gosney v. Sonora Independent School Dist., 603 F.2d 522 (5th Cir. 1979).

15 U.S.—Stolberg v. Caldwell, 423 F. Supp. 1295 (D. Conn. 1976).

16 U.S.—Longarzo v. Anker, 578 F.2d 469 (2d Cir. 1978).

17 Okla.—DeHart v. Independent School Dist. No. 1 of Tulsa County, 2011 OK CIV APP 68, 259 P.3d 877, 271 Ed. Law Rep. 491 (Div. 3 2011).

18 U.S.—Slusser v. Orange County Public Schools, 936 F. Supp. 895, 112 Ed. Law Rep. 937 (M.D. Fla. 1996).

19 U.S.—Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974).

20 U.S.—Rodgers v. Berger, 438 F. Supp. 713 (D. Mass. 1977).

21 U.S.—Kilcoyne v. Morgan, 664 F.2d 940, 1 Ed. Law Rep. 760 (4th Cir. 1981).

22 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Mont.—Akhtar v. Van de Wetering, 197 Mont. 205, 642 P.2d 149, 3 Ed. Law Rep. 167 (1982).

23 W. Va.—State ex rel. McLendon v. Morton, 162 W. Va. 431, 249 S.E.2d 919 (1978).

24 U.S.—Flaskamp v. Dearborn Public Schools, 232 F. Supp. 2d 730, 172 Ed. Law Rep. 651 (E.D. Mich. 2002), aff'd, 385 F.3d 935, 192 Ed. Law Rep. 359, 2004 FED App. 0343P (6th Cir. 2004).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

1. Schools and Education, General Considerations

§ 2203. Promotion and demotion

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4198, 4199, 4223(2), 4223(3)

The right of a staff or faculty member to promotion, or to be protected against demotion, is not necessarily a protected property or liberty interest.

The right of a faculty or staff member of an academic institution to a promotion is not necessarily a protected property interest.[1] The mere fact of nonpromotion does not in and of itself implicate a protectable liberty interest under the due process guaranty.[2] Moreover, the guaranty is not impaired where the authorities do not publicly announce the reasons therefore prior to judicial proceedings, and any publication of the official fact of the failure to be promoted does not provide the basis for a due process claim. While public explanations for the failure of the school board to promote an employee may affect liberty interests for due process purposes, a published personal opinion of a board member does not constitute an official, published position of the board for the purposes of determining whether any liberty interest of the teacher is implicated.[3]

As a general rule, in the absence of a protected liberty or property interest in connection with promotions, no process is due,[4] and a hearing is not required,[5] particularly in the absence of a requirement therefor in the rules and regulations of the academic

institution.[6] In any event, the voluntary granting of a hearing does not give rise to the type of hearing which must conform to all the criteria of a complete due process hearing.[7]

Demotion.

The mere expectation of continued employment at a certain promotional level position is not an interest warranting constitutional protection[8] although a property interest in continued employment may arise from contract.[9] In order to be entitled to due process protection, a person who is demoted must demonstrate the deprivation of a property or liberty interest.[10] A hearing in the case of a demotion as the result of the elimination of a position need not be held prior to the demotion as long as it is held in the normal course of events.[11]

Footnotes

1 U.S.—Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979).

2 Fla.—Herold v. University of South Florida, 806 So. 2d 638, 162 Ed. Law Rep. 636 (Fla. 2d DCA 2002).

3 U.S.—Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979).

4 U.S.—Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979).

5 U.S.—Clark v. Whiting, 607 F.2d 634 (4th Cir. 1979); Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979).

6 U.S.—Clark v. Whiting, 607 F.2d 634 (4th Cir. 1979).

7 U.S.—Clark v. Whiting, 607 F.2d 634 (4th Cir. 1979).

8 Cal.—Council of Directors and Supervisors v. Los Angeles Unified Sch. Dist., 35 Cal. App. 3d 147, 110 Cal. Rptr. 624 (2d Dist. 1973).

Demotion does not constitute infringement of liberty interest

U.S.—Orshan v. Anker, 489 F. Supp. 820 (E.D. N.Y. 1980).

Cal.—Grant v. Adams, 69 Cal. App. 3d 127, 137 Cal. Rptr. 834 (1st Dist. 1977).

9 Ill.—Chicago Principals Ass'n v. Board of Ed. of City of Chicago, 84 Ill. App. 3d 1095, 40 Ill. Dec. 381, 406 N.E.2d 82 (1st Dist. 1980).

10 U.S.—Danno v. Peterson, 421 F. Supp. 950 (N.D. Ill. 1976).

Cal.—Council of Directors and Supervisors v. Los Angeles Unified Sch. Dist., 35 Cal. App. 3d 147, 110 Cal. Rptr. 624 (2d Dist. 1973).

No arbitrary and malicious abuse of power

An elementary school principal's demotion to a teaching position at another school did not "shock the conscience" as required for her Fourteenth Amendment substantive due process claim, nor did the actions of the school board and superintendent in demoting her to a classroom teacher constitute an arbitrary and malicious abuse of power.

U.S.—Painter v. Campbell County Bd. of Educ., 417 F. Supp. 2d 854, 207 Ed. Law Rep. 226 (E.D. Ky. 2006).

11 Pa.—Sharon City School Dist. v. Hudson, 34 Pa. Commw. 278, 383 A.2d 249 (1978).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

1. Schools and Education, General Considerations

§ 2204. Racial composition of school system

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4228

The right of students not to be segregated on racial grounds in public schools is so fundamental and pervasive that it is embraced in the concept of due process of law.

The right of students not to be segregated on racial grounds in public schools is so fundamental and pervasive that it is embraced in the concept of due process of law.[1] The Due Process Clause of the Fifth Amendment does not tolerate the federal government's involvement with racially segregated education which the Fourteenth Amendment prohibits to the states.[2]

Footnotes

1 U.S.—Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 5, 3 L. Ed. 2d 19, 79 Ohio L. Abs. 452, 79 Ohio L. Abs. 462 (1958).
College admissions

When a college subcommittee, in considering who should be admitted to the college's biomedical program for the academic year, intentionally eliminates only nonminority students from the original list of qualified applicants and later proportionately chooses alternates by race, it violates due process.
U.S.—Hupart v. Board of Higher Ed. of City of New York, 420 F. Supp. 1087 (S.D. N.Y. 1976).

2 U.S.—Kelsey v. Weinberger, 498 F.2d 701 (D.C. Cir. 1974).

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16D C.J.S. Constitutional Law § 2205

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

2. Suspension, Discharge, or Nonrenewal of Contract of School Employees

a. Suspension, Discharge, or Nonrenewal of Contract of School Employees, in General

§ 2205. Suspension, discharge, or nonrenewal of contract of school employees, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4199 to 4202, 4223(3) to 4223(6)

As a prerequisite to an assertion of a due process right, a teacher, administrator, or other employee of an educational system who is suspended, discharged, or whose contract is not renewed must demonstrate a deprivation of a property or liberty interest protected by the Due Process Clause.

The suspension, discharge, or nonrenewal of the contract of a teacher, administrator, or other employee of an educational institution or system does not, in itself, constitute a deprivation of a property or liberty interest such as would invoke due process protections,[1] provided the reasons for the suspension, discharge, or nonrenewal are not constitutionally impermissible.[2] Although a tenured teacher has a property interest in his or her continued employment with a school district,[3] as long as the district follows the requirements of due process, that property interest can be terminated.[4] As a prerequisite to an assertion of a due process right, the person who is suspended, discharged, or whose contract is not renewed must demonstrate a deprivation of property, consisting of a denial of a legitimate claim to his or her continued employment; or a denial of liberty, consisting

of a serious damage to his or her standing and associations in the community, or a stigma or other disability that forecloses the opportunity to take advantage of other employment opportunities.[5]

A teacher or other employee with tenure has a legitimate claim of entitlement to continued employment, absent a sufficient cause for his or her discharge, and therefore has a property interest in continued employment of which he or she cannot be deprived without due process protection.[6] A tenured professor at a state institution not only has a constitutional right to procedural due process but also has a substantive due process right to be free from discharge for reasons that are arbitrary and capricious, or in other words, for reasons that are trivial, unrelated to the educational process, or wholly unsupported by a basis in fact.[7] However, a tenured teacher may relinquish his or her property rights in continued employment by voluntarily and intentionally violating the terms of the employment contract.[8]

Generally, a teacher or other employee who does not have tenure or a vested right to renewal does not have any expectation of continued employment, and thus cannot assert a taking of liberty or property warranting due process protection if he or she faces disciplinary action or his or her contract is not renewed,[9] although the absence of an explicit tenure provision does not always foreclose the possibility that a teacher has a property interest in employment warranting due process protection.[10] A teacher, administrator, or other employee whose employment is terminable at will does not have any property interest so as to be entitled to due process protection.[11] Probationary school teachers likewise do not have a constitutionally protected liberty or property interest in the renewal of their teaching contracts[12] although a probationary teacher has a due process right to have his or her status determined in accordance with the valid rules and regulations established by the school authorities.[13] In addition, a teacher's aide, as a nontenured employee, does not have a constitutionally protected property interest in continued employment.[14]

A person employed by an educational institution, although nontenured, or even probationary, who is dismissed or suspended during the term of a contract has a property interest in continued employment which is safeguarded by due process.[15] Where a contract is for a fixed period, however, timely notice of nonrenewal is traditionally the only process due unless otherwise expressly agreed by the parties.[16] To determine whether a violation of an employee's substantive due process rights has occurred in regard to the failure to renew a contract, the question is whether the government officials have acted in an arbitrary or capricious manner or so as to shock the conscience.[17]

Layoffs.

Tenured teachers were properly notified of their termination, as was required under the Due Process Clause and a school board's layoff policy, where the terminations were not "for cause," so as to trigger the hearing procedures contained in tenure statutes, and the teachers conceded that they received written notice of termination from the board within the prescribed period.[18]

CUMULATIVE SUPPLEMENT

Cases:

School superintendent did not have a property interest in her employment protectible by due process; she was at-will employee, her employment contract contained no guarantee of future employment or procedure for termination, and State Constitution declared her position to be at-will. U.S.C.A. Const.Amend. 14; Const. Art. 12, § 2. West Virginia Bd. of Educ. v. Marple, 783 S.E.2d 75 (W. Va. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

2 U.S.—Love v. Sessions, 568 F.2d 357 (5th Cir. 1978).
Ohio—Dorian v. Euclid Bd. of Ed., 62 Ohio St. 2d 182, 16 Ohio Op. 3d 208, 404 N.E.2d 155 (1980).

3 § 2202.

4 Pa.—Neshaminy School Dist. v. Neshaminy Federation of Teachers, 84 A.3d 391, 301 Ed. Law Rep. 921 (Pa. Commw. Ct. 2014).
S.D.—Wuest v. Winner School Dist. 59-2, 2000 SD 42, 607 N.W.2d 912, 142 Ed. Law Rep. 1040 (S.D. 2000).

5 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); Lybrook v. Members of Farmington Mun. Schools Bd. of Educ., 232 F.3d 1334, 149 Ed. Law Rep. 328 (10th Cir. 2000).

6 U.S.—Harbaugh v. Board of Educ. of City of Chicago, 716 F.3d 983, 293 Ed. Law Rep. 716 (7th Cir. 2013) (applying Illinois law).
Mo.—Dwyer v. Kansas City Missouri School Dist., 451 S.W.3d 704, 314 Ed. Law Rep. 572 (Mo. Ct. App. W.D. 2014).
Termination must comport with due process
Ind.—Smith v. Board of School Trustees of Monroe County Community School Corp., 991 N.E.2d 581, 295 Ed. Law Rep. 310 (Ind. Ct. App. 2013), transfer denied, 4 N.E.3d 1187 (Ind. 2014).
Teacher terminated due to corporal punishment she inflicted
N.Y.—Haas v. New York City Dept. of Educ., 106 A.D.3d 620, 966 N.Y.S.2d 397, 293 Ed. Law Rep. 482 (1st Dep't 2013).

7 U.S.—Morris v. Clifford, 903 F.2d 574, 60 Ed. Law Rep. 722 (8th Cir. 1990).

8 U.S.—Kalme v. West Virginia Bd. of Regents, 539 F.2d 1346 (4th Cir. 1976); Akyeampong v. Coppin State College, 538 F. Supp. 986, 4 Ed. Law Rep. 525 (D. Md. 1982), judgment aff'd, 725 F.2d 673 (4th Cir. 1983).

9 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Unilateral and unreasonable expectation of contract renewal
The right of a police officer employed by a community college to due course of law was not violated by the community college system's failure to renew his employment contract where the officer did not have entitlement to further employment but only a unilateral and unreasonable expectation that his contract would be renewed for another year.
Tex.—Govant v. Houston Community College System, 72 S.W.3d 69 (Tex. App. Houston 14th Dist. 2002).

10 U.S.—Bertot v. School Dist. No. 1, Albany County, Wyoming, 522 F.2d 1171 (10th Cir. 1975).

11 Ga.—Freeman v. Smith, 324 Ga. App. 426, 750 S.E.2d 739, 299 Ed. Law Rep. 268 (2013), cert. denied, (Feb. 24, 2014).
N.J.—Filgueiras v. Newark Public Schools, 426 N.J. Super. 449, 45 A.3d 986, 281 Ed. Law Rep. 603 (App. Div. 2012).
N.Y.—Scro v. Board of Educ. of Jordan-Elbridge Cent. School Dist., 87 A.D.3d 1342, 930 N.Y.S.2d 706, 272 Ed. Law Rep. 600 (4th Dep't 2011).

12 La.—Shiers v. Richland Parish School Bd., 902 So. 2d 1173, 198 Ed. Law Rep. 1009 (La. Ct. App. 2d Cir. 2005), writ denied, 916 So. 2d 1066 (La. 2005).

13 Cal.—Poschman v. Dumke, 31 Cal. App. 3d 932, 107 Cal. Rptr. 596 (1st Dist. 1973) (disapproved of on other grounds by, Armistead v. State Personnel Board, 22 Cal. 3d 198, 149 Cal. Rptr. 1, 583 P.2d 744 (1978)).

14 La.—Scott v. Ouachita Parish School Board, 768 So. 2d 702, 147 Ed. Law Rep. 1135 (La. Ct. App. 2d Cir. 2000).

15 U.S.—Laskar v. Peterson, 771 F.3d 1291, 311 Ed. Law Rep. 20 (11th Cir. 2014).
Tenn.—Bailey v. Blount County Bd. of Educ., 303 S.W.3d 216, 254 Ed. Law Rep. 420 (Tenn. 2010).

16 Idaho—Huyett v. Idaho State University, 140 Idaho 904, 104 P.3d 946, 195 Ed. Law Rep. 319 (2004).

Minn.—Christopher v. Windom Area School Bd., 781 N.W.2d 904, 256 Ed. Law Rep. 911 (Minn. Ct. App. 2010).

17 U.S.—Herts v. Smith, 345 F.3d 581, 181 Ed. Law Rep. 106 (8th Cir. 2003).

18 Ill.—Land v. Board of Educ. of City of Chicago, 325 Ill. App. 3d 294, 259 Ill. Dec. 49, 757 N.E.2d 912, 159 Ed. Law Rep. 297 (1st Dist. 2001), judgment aff'd in part, rev'd in part on other grounds, 202 Ill. 2d 414, 269 Ill. Dec. 452, 781 N.E.2d 249, 172 Ed. Law Rep. 910 (2002).

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16D C.J.S. Constitutional Law § 2206

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

2. Suspension, Discharge, or Nonrenewal of Contract of School Employees

a. Suspension, Discharge, or Nonrenewal of Contract of School Employees, in General

§ 2206. What constitutes deprivation of liberty interests of school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4197 to 4203, 4223(1) to 4223(7)

The mere fact that nonretention by a school system might make a teacher, administrator, or other employee less attractive to other school systems does not constitute a deprivation of a liberty interest protected by due process although an educator may be able to demonstrate a deprivation of a liberty interest by defamatory statements by making the proper showing.

The mere fact that nonretention by a school system might make a teacher, administrator, or other employee less attractive to other school systems does not constitute a deprivation of a liberty interest protected by due process.[1] Further, a teacher's interest in his or her good reputation is not alone a fundamental right or liberty interest protected under the theory of substantive due process.[2] Thus, for instance, a school principal who is not subjected to any stigmatizing conduct or comments in connection with the eventual nonrenewal of his or her contract due to concerns about his or her leadership abilities is not exposed to conduct that interferes with the right to engage in his or her occupation, and thus, the principal has no claim for a violation of substantive due process rights on that basis.[3]

In order for an educator to demonstrate a deprivation of a liberty interest by defamatory statements, the educator must demonstrate all four of the following elements: (1) the statements impugned the educator's good name, reputation, honor, or integrity; (2) the statements were false; (3) the statements must have occurred in the course of terminating the educator or must have foreclosed other employment opportunities; and (4) the statements must have been published.[4] To establish an unconstitutional liberty interest deprivation in connection with the publication of reasons for his or her discharge, a terminated school official must establish that: (1) he or she was stigmatized by the statements; (2) those statements were made public by administrators; and (3) he or she denied the stigmatizing statements.[5] A nontenured teacher,[6] such as a probationary teacher,[7] may likewise be entitled to due process protection, in regard to suspension or dismissal, if the action taken reflects on his or her good name, reputation, honor, or integrity.

There is no deprivation of a liberty interest where the criticism of the teacher is relatively minor and does not seriously impair his or her ability to obtain future employment,[8] particularly where an attempt to do so has not been demonstrated;[9] where the school authority merely asserts a lack of professional standards, inadequacy of performance, or incompetence,[10] without making any claim of serious character defects, such as dishonesty, immorality, or egregious conduct;[11] where the charges are the result of action by the state law enforcement agencies, such as by indictment,[12] or conviction of a felony;[13] or where there has merely been a nonrenewal of a contract.[14] An employee is not defamed or stigmatized in the course of a dismissal from public employment, and thus has no cognizable liberty interest in his or her reputation, where the alleged defamatory statements are made after the nonrenewal of the employee's contract and the employee never requests the name-clearing hearing required to sustain his or her claim.[15] Similarly, a school employee is not deprived of the protected property right, under the Due Process Clause, in continued employment, when although the employee allegedly suffers a loss of authority and responsibility as a result of supervisors' criticism of the employee's work, the employee is not terminated, his or her salary is not reduced, and the employee is provided full compensation due under his or her contract.[16]

Drug testing.

A teacher does not have a protected liberty interest in being free from undergoing urinalysis drug testing, as required to maintain a procedural due process claim against a board of education, because a teacher should expect that he or she will be subject to scrutiny to which other civil servants or professionals might not be subjected, including drug testing, and a teacher cannot demonstrate that his or her professional reputation is stigmatized by the fact that the teacher has to undergo urinalysis.[17]

Necessity of publication.

To constitute an infringement of a liberty interest, the stigmatizing reasons for the action must be publicly disclosed.[18] However, derogatory reasons which become public information solely by way of a requested public hearing,[19] or the institution of a judicial proceeding by the complaining party,[20] or through publication of the final order in a newspaper after an open record act request,[21] cannot form the basis for a deprivation of a liberty interest.

CUMULATIVE SUPPLEMENT

Cases:

Placement of problem code next to substitute teacher's name without hearing did not violate teacher's Fourteenth Amendment due process rights, as required for her stigma-plus claim; teacher had access to post deprivation proceedings to clear her name but did not pursue them. U.S. Const. Amend. 14. Peterson-Hagendorf v. City of New York, 146 F. Supp. 3d 483, 331 Ed. Law Rep. 227 (E.D. N.Y. 2015).

School district official's stated reasons for not renewing teacher's probationary contract, including teacher's inability to manage her classroom and her insubordination, were not sufficiently stigmatizing to establish that teacher was deprived liberty interest protected by Due Process Clause. U.S. Const. Amend. 14, § 1. Harmon v. Cumberland County Board of Education, 186 F. Supp. 3d 500 (E.D. N.C. 2016), aff'd, 2016 WL 5956694 (4th Cir. 2016).

Elementary school principal failed to allege that termination letter, characterizing her actions of failing to notify the school district of potential driving under the influence (DUI) charges as involving immorality, intemperance, and moral turpitude, was published, and thus failed to state a claim for deprivation of liberty interest protected as a procedural due process right the Fourteenth Amendment based on a "stigma-plus" theory. U.S. Const. Amend. 14. Judge v. Shikellamy School District, 135 F. Supp. 3d 284, 329 Ed. Law Rep. 240 (M.D. Pa. 2015).

Public school system superintendent's statement to superintendent's predecessor and others regarding basis for employee's termination, namely that he misused department furniture purchase cards deliberately and egregiously, was made in conjunction with employee's termination, as required for employee to state stigma-plus claim against school board and superintendent based on allegations that defendants deprived employee of a liberty interest by failing to afford him adequate due process through a name-clearing hearing before publicly disclosing the reasons for his termination; employee alleged that superintendent had conversation with others outside the school system on day he was advised of his termination and that alleged basis for his termination was shared with another former superintendent shortly thereafter. U.S. Const. Amend. 14, § 1. Socol v. Albemarle County School Board, 399 F. Supp. 3d 523 (W.D. Va. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

2 U.S.—Lifton v. Board of Educ. of City of Chicago, 290 F. Supp. 2d 940, 183 Ed. Law Rep. 469 (N.D. Ill. 2003).

3 U.S.—Howard v. Columbia Public School Dist., 363 F.3d 797, 186 Ed. Law Rep. 622 (8th Cir. 2004).

4 U.S.—Lighton v. University of Utah, 209 F.3d 1213, 143 Ed. Law Rep. 753 (10th Cir. 2000).
No proof of false statements
U.S.—Speziale v. Bethlehem Area School Dist., 266 F. Supp. 2d 366, 179 Ed. Law Rep. 219 (E.D. Pa. 2003).
No tangible loss of other employment opportunities due to termination
U.S.—Friend v. Lalley, 194 F. Supp. 2d 803 (N.D. Ill. 2002).

5 U.S.—Rush v. Perryman, 579 F.3d 908, 248 Ed. Law Rep. 599 (8th Cir. 2009).
Stigmatizing statements
Statements regarding a teacher's alleged mishandling of public funds fit the definition of "stigmatizing statements" that called into question her good name, reputation, honor, or integrity, for purposes of her claim that she was deprived of a liberty interest without due process.
U.S.—Abelli v. Ansonia Bd. of Educ., 987 F. Supp. 2d 170, 306 Ed. Law Rep. 88 (D. Conn. 2013).

6 U.S.—McGhee v. Draper, 564 F.2d 902 (10th Cir. 1977).
Conn.—Lee v. Board of Ed. of City of Bristol, 181 Conn. 69, 434 A.2d 333 (1980).

7 U.S.—Gibson v. Caruthersville School Dist. No. 8, 336 F.3d 768, 179 Ed. Law Rep. 84 (8th Cir. 2003).
N.Y.—Wilcox v. Newark Valley Cent. School Dist., 74 A.D.3d 1558, 904 N.Y.S.2d 523, 258 Ed. Law Rep. 366 (3d Dep't 2010).

8 U.S.—Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College, 519 F.2d 126 (8th Cir. 1975).
Comments regarding principal merely list of concerns
U.S.—Ulichny v. Merton Community School Dist., 249 F.3d 686, 153 Ed. Law Rep. 573 (7th Cir. 2001).

9 U.S.—Doscher v. Seminole Common Consolidated School Dist. No. One, Gaines County, Texas, 377 F. Supp. 1166 (N.D. Tex. 1974).

10 U.S.—Robertson v. Rogers, 679 F.2d 1090, 4 Ed. Law Rep. 1060 (4th Cir. 1982).

Statement may be defamatory, but not stigmatizing

Md.—Samuels v. Tschechtelin, 135 Md. App. 483, 763 A.2d 209, 149 Ed. Law Rep. 784 (2000).

11 U.S.—Norbeck v. Davenport Community School Dist., 545 F.2d 63 (8th Cir. 1976).

12 U.S.—Moore v. Knowles, 482 F.2d 1069, 17 Fed. R. Serv. 2d 1184 (5th Cir. 1973).

13 U.S.—Mozier v. Board of Ed. of Cherry Hill Tp., Camden County, 450 F. Supp. 742 (D.N.J. 1977).

14 U.S.—Sigmon v. Poe, 564 F.2d 1093 (4th Cir. 1977).

15 U.S.—Puchalski v. School Dist. of Springfield, 161 F. Supp. 2d 395, 156 Ed. Law Rep. 1092 (E.D. Pa. 2001).

16 U.S.—Echtenkamp v. Loudon County Public Schools, 263 F. Supp. 2d 1043, 178 Ed. Law Rep. 271 (E.D. Va. 2003).

17 U.S.—Warren v. Board of Educ. of City of St. Louis, 200 F. Supp. 2d 1053, 165 Ed. Law Rep. 183 (E.D. Mo. 2001).

18 U.S.—Lighton v. University of Utah, 209 F.3d 1213, 143 Ed. Law Rep. 753 (10th Cir. 2000); Abelli v. Ansonia Bd. of Educ., 987 F. Supp. 2d 170, 306 Ed. Law Rep. 88 (D. Conn. 2013).

Critical statements not made public

U.S.—Echtenkamp v. Loudon County Public Schools, 263 F. Supp. 2d 1043, 178 Ed. Law Rep. 271 (E.D. Va. 2003).

N.Y.—Wilcox v. Newark Valley Cent. School Dist., 74 A.D.3d 1558, 904 N.Y.S.2d 523, 258 Ed. Law Rep. 366 (3d Dep't 2010).

19 U.S.—Clark v. Mann, 562 F.2d 1104 (8th Cir. 1977).

Ark.—Burden v. Hayden, 275 Ark. 93, 627 S.W.2d 555, 2 Ed. Law Rep. 1223 (1982).

20 U.S.—Fuller v. Laurens County School Dist. No. 56, 563 F.2d 137 (4th Cir. 1977).

21 U.S.—Lafferty v. Board of Educ. of Floyd County, 133 F. Supp. 2d 941, 152 Ed. Law Rep. 562 (E.D. Ky. 2001).

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16D C.J.S. Constitutional Law § 2207

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

2. Suspension, Discharge, or Nonrenewal of Contract of School Employees

a. Suspension, Discharge, or Nonrenewal of Contract of School Employees, in General

§ 2207. Creation of property interests

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4197 to 4203, 4223(1) to 4223(7)

Property interests in continued employment requisite to due process protection may be created by state law, contract, or the existence of a de facto tenure.

Property interests, which a teacher, administrator, or other employee must possess with respect to employment in order to trigger due process protections, must arise from a legitimate claim of entitlement to continued employment which is created by a source independent of the Due Process Clause itself,[1] such as state law,[2] and the sufficiency of the claim[3] and the extent of the property right[4] is determined by state law. Accordingly, such property interests may be created by statute, contract, or the existence of a de facto tenure.[5]

A property interest may be acquired when the employment is accompanied by regulations prohibiting discharge except for good cause and under certain procedures,[6] or when a teacher is given by statute the right to continued employment except upon a showing of good cause or bona fide elimination of the position.[7] While a property interest may be created if there are policies

and practices promulgated and fostered by the school authorities that constitute a legitimate claim of entitlement to continued employment,[8] there is authority for the view that an expectation of continued employment grounded on a pattern of practice is constitutionally protected only if state law, either through formal state enactments or through judicial interpretation of relevant enactments, affirmatively recognizes such an expectation.[9]

A mere unilateral or subjective expectancy of continued employment on the part of a teacher is not sufficient to create a property interest protected by due process,[10] particularly in the case of a probationary teacher,[11] although an objective expectancy of continued employment, proven by a specific or implied contract right or by a de facto tenure system, is protected.[12] There is an enforceable expectation of continued employment where a statute provides a specific requirement for the dismissal of temporary professional employees,[13] or there is noncompliance with rules of the school authorities requiring notification if reappointment is to be denied.[14]

A public school teacher has no property interest in a contract beyond its term and thus is not entitled to constitutional due process protections with respect to the nonrenewal of his or her teaching contract.[15] A statute which creates certain minimum procedural requirements which may be invoked by a teacher whose contract is not renewed does not create a sufficient property interest warranting due process protection in the absence of a formal tenure system.[16] A teacher who has attained compulsory retirement age, and thus has no contractual or statutory right to the renewal of his or her contract, is likewise not entitled to procedural due process.[17]

CUMULATIVE SUPPLEMENT

Cases:

Texas legislature's instruction to board of regents, in creating new university component institution that consolidated two abolished component institutions, to facilitate the employment at the new institution of as many faculty and staff of an abolished institution as was prudent and practical created, at most a "unilateral expectation" of employment, not a legitimate entitlement that would be protected under the Due Process Clause. U.S. Const. Amend. 14. Edionwe v. Bailey, 860 F.3d 287, 344 Ed. Law Rep. 104 (5th Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

2 U.S.—Harbaugh v. Board of Educ. of City of Chicago, 716 F.3d 983, 293 Ed. Law Rep. 716 (7th Cir. 2013).
Ala.—Taylor v. Huntsville City Bd. of Educ., 143 So. 3d 219, 307 Ed. Law Rep. 562 (Ala. Civ. App. 2013), cert. denied, (Jan. 10, 2014).
Ind.—Smith v. Board of School Trustees of Monroe County Community School Corp., 991 N.E.2d 581, 295 Ed. Law Rep. 310 (Ind. Ct. App. 2013), transfer denied, 4 N.E.3d 1187 (Ind. 2014).

3 U.S.—Easter v. Olson, 552 F.2d 252 (8th Cir. 1977).

4 Ga.—West v. Dooly County School Dist., 316 Ga. App. 330, 729 S.E.2d 469, 282 Ed. Law Rep. 679 (2012).

5 U.S.—Perkins v. Board of Directors of School Administrative Dist. No. 13, 686 F.2d 49, 6 Ed. Law Rep. 303 (1st Cir. 1982).
Ohio—Dorian v. Euclid Bd. of Ed., 62 Ohio St. 2d 182, 16 Ohio Op. 3d 208, 404 N.E.2d 155 (1980).

6 U.S.—Daly v. Sprague, 675 F.2d 716, 3 Ed. Law Rep. 845 (5th Cir. 1982).

7 Conn.—Lee v. Board of Ed. of City of Bristol, 181 Conn. 69, 434 A.2d 333 (1980).

8 U.S.—Zimmerer v. Spencer, 485 F.2d 176 (5th Cir. 1973).

Tex.—Bowen v. Calallen Independent School Dist., 603 S.W.2d 229 (Tex. Civ. App. Corpus Christi 1980), writ refused n.r.e., (Dec. 3, 1980).

Wash.—Smith v. Greene, 86 Wash. 2d 363, 545 P.2d 550 (1976).

University's handbook and manual

Mo.—Daniels v. Board of Curators of Lincoln University, 51 S.W.3d 1 (Mo. Ct. App. W.D. 2001).

9 U.S.—Stevens v. Joint School Dist. No. 1, Tony, Et Al., Rusk County, Wis., 429 F. Supp. 477 (W.D. Wis. 1977).

10 U.S.—Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

Interest was mere expectancy not subject to protection

Minn.—Christopher v. Windom Area School Bd., 781 N.W.2d 904, 256 Ed. Law Rep. 911 (Minn. Ct. App. 2010).

11 U.S.—Tatter v. Board of Ed. of Independent School Dist. No. 306, 653 F.2d 315 (8th Cir. 1981).

12 U.S.—Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

Assurance of reappointment

U.S.—Stapp v. Avoyelles Parish School Bd., 545 F.2d 527 (5th Cir. 1977).

13 Pa.—Andresky v. West Allegheny School Dist., 63 Pa. Commw. 222, 437 A.2d 1075, 1 Ed. Law Rep. 839 (1981).

14 U.S.—Assaf v. University of Texas System, 399 F. Supp. 1245 (S.D. Tex. 1975).

15 Tex.—Nairn v. Killeen Independent School Dist., 366 S.W.3d 229, 280 Ed. Law Rep. 1129 (Tex. App. El Paso 2012).

Wash.—Schlosser v. Bethel School Dist., 183 Wash. App. 280, 333 P.3d 475, 308 Ed. Law Rep. 485 (Div. 2 2014).

16 U.S.—Williams v. Day, 412 F. Supp. 336 (E.D. Ark. 1976), decision aff'd, 553 F.2d 1160 (8th Cir. 1977).

17 Ill.—Kennedy v. Community Unit School Dist. No. 7, Champaign County, 23 Ill. App. 3d 382, 319 N.E.2d 243 (4th Dist. 1974).

S.D.—Monnier v. Todd County Independent School Dist., 245 N.W.2d 503 (S.D. 1976).

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 2208. Proceedings regarding school employees, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4202, 4223(6)

The requirements of procedural due process, normally notice and an opportunity to be heard, must be afforded a teacher, administrator, or other employee in connection with suspension, discharge, or nonrenewal of a contract if he or she has tenure or a reasonable expectation of reemployment, or if he or she asserts that the disciplinary action has been taken for a constitutionally impermissible reason.

Generally, the requirements of procedural due process, normally notice and an opportunity to be heard, must be afforded a teacher, administrator, or other employee prior to discharge if he or she has tenure or a reasonable expectation of reemployment, or if he or she asserts that the disciplinary action has been taken for a constitutionally impermissible reason.[1] Before a public employee with a protectable property interest in his or her employment is dismissed, he or she is entitled to at least a limited pretermination hearing to be followed by a more comprehensive posttermination hearing to be held within a reasonably prompt period of time, and at a minimum, the employee is entitled to notice and an opportunity to respond.[2] However, an immediate suspension of an employee may be proper when an important state interest is implicated by the employee's conduct.[3]

Accordingly, upon proof of a conviction of a crime of moral turpitude, the revocation of an educator's teaching certificate on summary judgment does not violate due process.[4]

Administrative proceedings for the dismissal of a tenured teacher before a hearing officer, which are quasi-judicial in nature, are governed by fundamental principles and requirements of due process.[5] Due process is satisfied if the procedure is adequate to prevent unreasonable, arbitrary, or capricious decisions,[6] and compliance with statutory procedures may be sufficient to satisfy due process requirements.[7]

Due process does not require that a teacher be granted a hearing prior to notification of nonrenewal of his or her contract.[8] In the absence of undue delay, the suspension of a tenured teacher, with or without pay, prior to a hearing on the charges does not violate due process.[9] Note, a state university's alleged failure to follow the university's rules and procedures in revoking a professor's tenure and terminating his or her employment does not constitute a violation of the professor's procedural due process rights where the university provides the professor with notice of the charges against him or her and provides an adequate hearing.[10]

Waiver.

A teacher's waiver of the right to a hearing obviates any complaint of a denial of due process of law.[11]

CUMULATIVE SUPPLEMENT

Cases:

Even if teachers had a vested property right to continued employment under Teacher Due Process Act (TDPA), their due process rights were not violated when Legislature amended TDPA, even though there was no public hearing on legislation; amendments applied to all tenured teachers employed by all school districts, Legislature did not terminate any teacher's employment and did not prohibit any school district from contracting with its teachers under same terms as had been in prior version of TDPA, and public notice occurred when Senate adopted amendments to proposed legislation and sent amendments to House of Representatives for consideration. U.S. Const. Amend. 14; Kan. Stat. Ann. §§ 72-2259, 72-5436 et seq. Scribner v. Board of Education of U.S.D. No. 492, 419 P.3d 1149 (Kan. 2018).

Arbitration award terminating teacher's employment as a tenured teacher did not violate teacher's due process rights, where teacher was provided with notice, an appropriate hearing, and opportunity to present evidence and cross-examine witnesses. U.S.C.A. Const.Amend. 14. Davis v. New York City Bd., 137 A.D.3d 716, 30 N.Y.S.3d 2, 329 Ed. Law Rep. 1041 (1st Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

2 U.S.—Townsend v. Vallas, 99 F. Supp. 2d 902, 145 Ed. Law Rep. 263 (N.D. Ill. 2000), aff'd in part, rev'd in part on other grounds, 256 F.3d 661, 155 Ed. Law Rep. 142 (7th Cir. 2001).
Notice and opportunity to request hearing
U.S.—Mirabilio v. Regional School Dist. 16, 761 F.3d 212, 308 Ed. Law Rep. 89 (2d Cir. 2014) (applying Connecticut law).

Right to fair and impartial pretermination hearing

U.S.—Christiansen v. West Branch Community School Dist., 674 F.3d 927, 279 Ed. Law Rep. 43 (8th Cir. 2012).

Lack of hearing not due process violation when no hearing requested

U.S.—Wilson v. Board of Trustees of Community College of Baltimore County, 333 F. Supp. 2d 392, 192 Ed. Law Rep. 174 (D. Md. 2004).

3 U.S.—Palotai v. University of Maryland at College Park, 38 Fed. Appx. 946, 167 Ed. Law Rep. 667 (4th Cir. 2002).

Suspension due to threatening conduct

U.S.—Earley v. Marion, 540 F. Supp. 2d 680, 231 Ed. Law Rep. 224 (W.D. Va. 2008), aff'd, 340 Fed. Appx. 169 (4th Cir. 2009).

Suspension due to excessive force against student

La.—Monier v. St. Charles Parish School Bd., 65 So. 3d 731, 269 Ed. Law Rep. 1002 (La. Ct. App. 5th Cir. 2011).

Suspension of university employee based on drug-related arrest

U.S.—Gilbert v. Homar, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997).

4 Pa.—Bowalick v. Com., 840 A.2d 519, 184 Ed. Law Rep. 903 (Pa. Commw. Ct. 2004).

5 Ill.—Board of Educ. of Community Consol. School Dist. No. 54 v. Spangler, 328 Ill. App. 3d 747, 263 Ill. Dec. 1, 767 N.E.2d 452, 166 Ed. Law Rep. 294 (1st Dist. 2002).

6 U.S.—Chung v. Park, 514 F.2d 382 (3d Cir. 1975).

N.Y.—Denhoff v. Mamaroneck Union Free School Dist., 101 A.D.3d 997, 957 N.Y.S.2d 208, 288 Ed. Law Rep. 396 (2d Dep't 2012).

7 U.S.—Atencio v. Board of Educ. of Penasco Independent School Dist. No. 4, 658 F.2d 774 (10th Cir. 1981).

N.J.—Board of Ed., Wyckoff Tp. v. Wyckoff Ed. Ass'n, 168 N.J. Super. 497, 403 A.2d 916 (App. Div. 1979).

N.C.—Baxter v. Poe, 42 N.C. App. 404, 257 S.E.2d 71 (1979).

8 U.S.—Providence Teachers Union v. Donilon, 492 F. Supp. 709 (D.R.I. 1980).

Kan.—Unified School Dist. No. 461, Wilson County v. Dice, 228 Kan. 40, 612 P.2d 1203 (1980).

9 U.S.—Peacock v. Board of Regents of Universities and State Colleges of Arizona, 510 F.2d 1324 (9th Cir. 1975).

N.Y.—Polskin v. Board of Ed. of Kinderhook Central School Dist., Columbia County, 49 A.D.2d 968, 373 N.Y.S.2d 692 (3d Dep't 1975).

10 U.S.—Anderson v. Ohio State University, 26 Fed. Appx. 412, 161 Ed. Law Rep. 794 (6th Cir. 2001).

11 U.S.—Jawa v. Fayetteville State University, 426 F. Supp. 218 (E.D. N.C. 1976).

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§ 2209. Requisites and sufficiency of notice in proceedings involving school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4202, 4223(6)

The notice required by due process is sufficient if it apprises the teacher, administrator, or other employee of the nature of the charges brought against him or her, and of the right to the names of witnesses.

The notice required by due process is sufficient if it apprises the teacher, administrator, or other employee of the nature of the charges brought against him or her,[1] and of the right to the names of witnesses.[2] Due process requires an explanation of the employer's evidence,[3] and the names and the nature of the testimony of the witnesses against the person.[4] Generally, a notice by inference is inadequate, although an informal notice of the reasons for a discharge, which grows out of a prescribed grievance procedure, may satisfy due process requirements.[5] In addition, a failure to provide formal notice may be cured when a teacher receives actual notice.[6]

Due process requires only that a public school teacher be given notice of the charges against him or her,[7] with the charges sufficiently specific as to inform the person of the acts which he or she has to defend against.[8] The charges must not be vague or indefinite.[9]

Footnotes

1 Fla.—Schimenti v. School Bd. of Hernando County, 73 So. 3d 831, 273 Ed. Law Rep. 921 (Fla. 5th DCA 2011).
N.Y.—Duncan v. New York City Dept. of Educ., 124 A.D.3d 463, 1 N.Y.S.3d 89, 314 Ed. Law Rep. 510 (1st Dep't 2015).
Grant of continuances due to amendments to charges
Cal.—Thornbrough v. Western Placer Unified School District, 223 Cal. App. 4th 169, 167 Cal. Rptr. 3d 24 (3d Dist. 2013).
Notice of hearing sufficient
U.S.—Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000).

2 U.S.—Laskar v. Peterson, 771 F.3d 1291, 311 Ed. Law Rep. 20 (11th Cir. 2014).
Wyo.—White v. Board of Trustees of Western Wyoming Community College Dist., 648 P.2d 528, 5 Ed. Law Rep. 633 (Wyo. 1982).

3 Ind.—Smith v. Board of School Trustees of Monroe County Community School Corp., 991 N.E.2d 581, 295 Ed. Law Rep. 310 (Ind. Ct. App. 2013), transfer denied, 4 N.E.3d 1187 (Ind. 2014).
Tenn.—Thompson v. Memphis City Schools Bd. of Educ., 395 S.W.3d 616, 291 Ed. Law Rep. 906 (Tenn. 2012).

4 U.S.—Laskar v. Peterson, 771 F.3d 1291, 311 Ed. Law Rep. 20 (11th Cir. 2014).

5 U.S.—Bignall v. North Idaho College, 538 F.2d 243 (9th Cir. 1976).

6 W. Va.—Karle v. Board of Trustees/Marshall University, 212 W. Va. 657, 575 S.E.2d 267, 173 Ed. Law Rep. 227 (2002).

7 Ind.—Board of School Com'rs of City of Indianapolis v. Walpole, 801 N.E.2d 622, 184 Ed. Law Rep. 535 (Ind. 2004).

8 Ky.—Mavis v. Board of Ed. of Owensboro Independent School Dist., 563 S.W.2d 738 (Ky. Ct. App. 1977).
Charges adequate
N.Y.—In re Carroll (Pirkle), 296 A.D.2d 755, 745 N.Y.S.2d 271, 167 Ed. Law Rep. 335 (3d Dep't 2002).

9 U.S.—Anderson v. Evans, 660 F.2d 153 (6th Cir. 1981).

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§ 2210. Requisites of hearing involving school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4202, 4223(6)

In the context of disciplinary proceedings affecting the staff or faculty of educational institutions, due process means only that at some time in the course of administrative proceedings there must have been a due process hearing.

In connection with the requirement of a hearing under the due process guaranty in the case of faculty and staff disciplinary proceedings, there is no due process requirement other than providing an opportunity for a hearing, and it is the teacher desiring to challenge the action of the school authority who has the burden of requesting a hearing.[1] It is sufficient that at some time in the course of the administrative proceedings there has been a due process hearing, and due process does not require a hearing at every step of the proceedings.[2] Further, it is not necessarily a denial of due process if internal procedures or guidelines are not followed with respect to the treatment of employees as long as minimum due process is accorded.[3]

Under the Due Process Clause, school employees are entitled to a hearing before termination of their employment; a statutory posttermination procedure may be required,[4] and in various cases, pretermination due process has been found sufficient.[5] It

should be noted that even if a teacher's pretermination procedure is considered cursory, it may be saved under the due process analysis by an extensive postdeprivation hearing.[6] Thus, where a school employee's pretermination hearing is limited to an opportunity to respond in writing to the charges that have been lodged and are under investigation, it is a constitutionally cognizable hearing nonetheless, and whether it passes constitutional muster under the Due Process Clause depends on the extensiveness of the postdismissal procedures that are made available to the employee.[7]

Footnotes

1 Ala.—Christeson v. Northwest Alabama State Jr. College, 371 So. 2d 426 (Ala. Civ. App. 1979).

2 Ky.—Wagner v. Department of Ed., State Personnel Bd., 549 S.W.2d 300 (Ky. 1977).

3 U.S.—de Llano v. Berglund, 142 F. Supp. 2d 1165, 154 Ed. Law Rep. 820 (D.N.D. 2001), judgment aff'd, 282 F.3d 1031, 162 Ed. Law Rep. 74 (8th Cir. 2002); Echtenkamp v. Loudon County Public Schools, 263 F. Supp. 2d 1043, 178 Ed. Law Rep. 271 (E.D. Va. 2003).

4 U.S.—Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494, 23 Ed. Law Rep. 473 (1985).

5 U.S.—de Llano v. Berglund, 282 F.3d 1031, 162 Ed. Law Rep. 74 (8th Cir. 2002); Bluitt v. Houston Independent School Dist., 236 F. Supp. 2d 703 (S.D. Tex. 2002).

6 U.S.—Lafferty v. Board of Educ. of Floyd County, 133 F. Supp. 2d 941, 152 Ed. Law Rep. 562 (E.D. Ky. 2001).

Postdischarge procedure provides full and complete hearing

When a formal postdischarge procedure exists in which a discharged school district employee is afforded a full and complete evidentiary hearing, a predischarge procedure that only calls for a notice of deficient performance and an opportunity to respond satisfies due process.

U.S.—Hawkins v. Board of Public Ed. in Wilmington, 468 F. Supp. 201 (D. Del. 1979).

7 Tenn.—Bailey v. Blount County Bd. of Educ., 303 S.W.3d 216, 254 Ed. Law Rep. 420 (Tenn. 2010).

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§ 2211. Sufficiency of hearing involving school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4202, 4223(6)

The hearing required by due process, prior to the suspension, discharge, or nonrenewal of the contract of a teacher, administrator, or other employee, must meet the minimum standards of due process, and the extent and nature of the hearing may vary from situation to situation, depending upon all of the facts and circumstances.

The hearing required by due process, prior to the suspension, discharge, or nonrenewal of the contract of a teacher, administrator, or other employee, must meet the minimum standards of due process.[1] Due process does not in every instance require a full-fledged judicial trial or hearing,[2] and the extent and nature of the hearing may vary from situation to situation, depending upon all of the facts and circumstances.[3] Thus, a school board's teacher termination hearings are of an informal character, and are not controlled by strict rules of evidence and procedure, and in such instances, due process is flexible and calls for such procedural protections as the particular situation demands.[4]

The hearing must be fair,[5] and impartial,[6] and representation by counsel may be necessary.[7] Due process requires that the person be accorded a meaningful opportunity to be heard in his or her own defense,[8] with a reasonable time interval to marshal facts in evidence.[9] Due process does not include discovery rights in a termination hearing.[10]

Due process does not place an affirmative burden on the school authority to call and produce witnesses on behalf of the teacher but merely requires that the teacher or faculty member not be precluded from calling witnesses and presenting his or her own evidence.[11] Furthermore, the teacher must be given the opportunity to confront and cross-examine adverse witnesses[12] although the right to cross-examination is not absolute.[13] Due process does not preclude school authorities from considering statements made by potential witnesses who do not appear at the hearing.[14]

In meeting due process standards, the school authority is afforded a wider latitude in the reception of evidence than is allowed a court and is permitted to admit and give probative effect to evidence of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.[15] However, at a hearing following a notice of intent to recommend discharge, school administrators may not introduce evidence of new reasons for the discharge that are different from the charges stated in the notice, and this ensures that an employee receives due process through adequate notice.[16]

Due process requires that a hearing be before a tribunal that both possesses some academic expertise and has an apparent impartiality toward the charges.[17] In the absence of a showing of prejudice, a combination of the adjudicating function with investigating or prosecuting functions does not, in itself, create an unconstitutional risk of bias so as to deny due process[18] although it has been found that a school board cannot be the antagonist and judge and still provide due process to a teacher whom the school board seeks to dismiss.[19] It is not required that a recording of the hearing be kept[20] or that witnesses be placed under oath at the hearing.[21]

While the person who makes the decision must hear the evidence,[22] those who finally vote on the decision need not have had a direct aural reception of all the evidence[23] or read the entire record before the hearing body.[24] Due process is not violated by a mistake in judgment by the school authority or by its conduct in weighing the evidence.[25]

CUMULATIVE SUPPLEMENT

Cases:

Provision of teacher tenure law governing termination of tenured teachers, which provided pre-termination opportunity to respond to charges and two post-termination hearings, first being full evidentiary hearing before a tenure hearing panel, which then made recommendation to superintendent and second being judicial review in district court, provided sufficient due process protections on its face. U.S.C.A. Const.Amend. 14; LSA–R.S. 17:443(B)(1), (2). LaPointe v. Vermilion Parish School Bd., 173 So. 3d 1152 (La. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Mo.—Valter v. Orchard Farm School Dist., 541 S.W.2d 550 (Mo. 1976).
Pa.—Kudasik v. Board of Directors, Port Allegany School Dist., 23 Pa. Commw. 208, 350 A.2d 887 (1976).

S.D.—Hensley v. Yankton Independent School Dist. No. 1, 88 S.D. 670, 227 N.W.2d 441 (1975).

2 U.S.—Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000).

3 U.S.—Bogart v. Unified School Dist. No. 298 of Lincoln County, Kansas, 432 F. Supp. 895 (D. Kan. 1977).

4 Fla.—Seiden v. Adams, 150 So. 3d 1215, 311 Ed. Law Rep. 1152 (Fla. 4th DCA 2014), review denied, 2015 WL 693276 (Fla. 2015).

Hearing officer may limit each party's time to present evidence

Ky.—Drummond v. Todd County Bd. of Educ., 349 S.W.3d 316, 272 Ed. Law Rep. 1022 (Ky. Ct. App. 2011).

5 U.S.—Christiansen v. West Branch Community School Dist., 674 F.3d 927, 279 Ed. Law Rep. 43 (8th Cir. 2012).

S.D.—Dale v. Board of Ed., Lemmon Independent School Dist. 52-2, 316 N.W.2d 108, 2 Ed. Law Rep. 865 (S.D. 1982).

6 U.S.—Christiansen v. West Branch Community School Dist., 674 F.3d 927, 279 Ed. Law Rep. 43 (8th Cir. 2012).

N.Y.—Liu v. New York City Board/Department of Educ., 107 A.D.3d 464, 967 N.Y.S.2d 334, 293 Ed. Law Rep. 1012 (1st Dep't 2013).

No evidence of personal animosity or other bias

U.S.—Cypert v. Independent School Dist. No. I-050 of Osage County, 661 F.3d 477, 273 Ed. Law Rep. 596 (10th Cir. 2011).

7 U.S.—James v. Board of School Com'rs of Mobile County, Ala., 484 F. Supp. 705 (S.D. Ala. 1979).

N.Y.—Aster v. Board of Ed. of City of New York, 72 Misc. 2d 953, 339 N.Y.S.2d 903 (Sup 1972).

8 Ind.—Board of School Com'rs of City of Indianapolis v. Walpole, 801 N.E.2d 622, 184 Ed. Law Rep. 535 (Ind. 2004).

N.Y.—Ajeleye v. New York City Dept. of Educ., 112 A.D.3d 425, 976 N.Y.S.2d 68, 299 Ed. Law Rep. 147 (1st Dep't 2013).

9 U.S.—Stewart v. Bailey, 556 F.2d 281 (5th Cir. 1977), on reh'g, 561 F.2d 1195 (5th Cir. 1977).

Minn.—Hardy v. Independent School Dist. No. 694, 301 Minn. 373, 223 N.W.2d 124 (1974).

10 Ind.—Board of School Com'rs of City of Indianapolis v. Walpole, 801 N.E.2d 622, 184 Ed. Law Rep. 535 (Ind. 2004).

11 U.S.—U.S. v. Richardson Independent School Dist., 483 F. Supp. 80 (N.D. Tex. 1979), aff'd, 626 F.2d 171 (5th Cir. 1980).

12 Ala.—Pinion v. Alabama State Tenure Com'n, 415 So. 2d 1091, 5 Ed. Law Rep. 312 (Ala. Civ. App. 1982).

Ill.—Kimble v. Illinois State Bd. of Educ., 2014 IL App (1st) 123436, 384 Ill. Dec. 73, 16 N.E.3d 169, 308 Ed. Law Rep. 1113 (App. Ct. 1st Dist. 2014).

Mo.—Williams v. Board of Ed., Cass R-VIII School Dist., 573 S.W.2d 81 (Mo. Ct. App. 1978).

Serious charges

Due process required that an elementary school principal be permitted to cross-examine witnesses for the school district who gave affidavits for use at the principal's termination hearing where the termination decision was based on charges that would stain the principal's professional reputation and threaten her livelihood.

U.S.—McClure v. Independent School Dist. No. 16, 228 F.3d 1205, 147 Ed. Law Rep. 892 (10th Cir. 2000).

13 Cal.—California Teachers Ass'n v. California Com'n on Teacher Credentialing, 111 Cal. App. 4th 1001, 4 Cal. Rptr. 3d 369, 180 Ed. Law Rep. 239 (3d Dist. 2003).

14 Me.—Elvin v. City of Waterville, 573 A.2d 381, 60 Ed. Law Rep. 79 (Me. 1990).

N.Y.—Mauro v. Walcott, 115 A.D.3d 547, 982 N.Y.S.2d 109, 302 Ed. Law Rep. 304 (1st Dep't 2014).

15 N.C.—Baxter v. Poe, 42 N.C. App. 404, 257 S.E.2d 71 (1979).

16 N.M.—Santa Fe Public Schools v. Romero, 131 N.M. 383, 2001-NMCA-103, 37 P.3d 100, 160 Ed. Law Rep. 623 (Ct. App. 2001).

17 U.S.—Laskar v. Peterson, 771 F.3d 1291, 311 Ed. Law Rep. 20 (11th Cir. 2014).

Ariz.—Knollmiller v. Welch, 128 Ariz. 34, 623 P.2d 823 (Ct. App. Div. 2 1980).

S.D.—Moran v. Rapid City Area School Dist. No. 51-4, Pennington and Meade Counties, 281 N.W.2d 595 (S.D. 1979).

18 Iowa—Wedergren v. Board of Directors, 307 N.W.2d 12 (Iowa 1981).

Mich.—Arnold v. Crestwood Bd. of Educ., 87 Mich. App. 625, 277 N.W.2d 158 (1978).

Mo.—Williams v. Board of Ed., Cass R-VIII School Dist., 573 S.W.2d 81 (Mo. Ct. App. 1978).

19 Ill.—Board of Educ. of Community Consol. School Dist. No. 54 v. Spangler, 328 Ill. App. 3d 747, 263 Ill. Dec. 1, 767 N.E.2d 452, 166 Ed. Law Rep. 294 (1st Dist. 2002).

20 Ohio—Robinson v. Springfield Local School Dist. Bd. of Educ., 144 Ohio App. 3d 38, 759 N.E.2d 444, 159 Ed. Law Rep. 749 (9th Dist. Summit County 2001).

21 Cal.—Broussard v. Regents of University of California, 131 Cal. App. 3d 636, 184 Cal. Rptr. 460, 5 Ed. Law Rep. 548 (1st Dist. 1982).

22 U.S.—Hawkins v. Board of Public Ed. in Wilmington, 468 F. Supp. 201 (D. Del. 1979).

23 U.S.—Hawkins v. Board of Public Ed. in Wilmington, 468 F. Supp. 201 (D. Del. 1979).

Pa.—Boehm v. Board of Ed. of School Dist. of Pittsburgh, 30 Pa. Commw. 468, 373 A.2d 1372 (1977).

24 Kan.—Kelly v. Kansas City, 231 Kan. 751, 648 P.2d 225, 5 Ed. Law Rep. 623 (1982).

25 U.S.—Miller v. Dean, 430 F. Supp. 26 (D. Neb. 1976), judgment aff'd, 552 F.2d 266 (8th Cir. 1977).

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16D C.J.S. Constitutional Law § 2212

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§ 2212. Decision and review in proceedings involving school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4202, 4223(6)

The decision rendered with respect to the suspension, discharge, or nonrenewal of the contract of a teacher, administrator, or other employee must rest solely on legal rules and evidence adduced at the hearing.

The decision rendered by the school authority with respect to the suspension, discharge, or nonrenewal of the contract of a teacher, administrator, or other employee must rest solely on legal rules and evidence adduced at the hearing[1] and must be amplified with findings of fact and legal conclusions.[2] The decision-maker must be presented with and consider a minimal amount of credible evidence sufficient to support a legal basis for its ultimate decision.[3]

The reasons for the determination, and the evidentiary basis relied upon, must be clearly stated,[4] and mere conclusory terms are not sufficient to support a decision.[5] Moreover, a teacher who is found guilty of conduct not charged is deprived of due process.[6]

Review.

The dismissal of an administrative appeal by a teacher subject to disciplinary proceedings for failure to institute it within the time prescribed by statute does not violate due process.[7] The lack of judicial review from the decision of the school authority to suspend, discharge, or not to renew the contract of a provisional teacher does not deny due process where administrative review is provided by statute, and limited review by certiorari may be available.[8] In addition, the remand of the case to the school authority by the reviewing court to remedy mistakes in procedure, rather than reversing it, is not a violation of due process.[9] However, review undertaken by a school board of a teacher's nonrenewal hearing has been found insufficient to satisfy due process requirements, absent a showing that the board engaged in a meaningful review and made an informed decision based on the evidence presented by both parties.[10]

Footnotes

1 U.S.—Kinsella v. Board of Ed. of Central School Dist. No. 7 of Towns of Amherst and Tonawanda, Erie County, 378 F. Supp. 54 (W.D. N.Y. 1974).
N.Y.—Aster v. Board of Ed. of City of New York, 72 Misc. 2d 953, 339 N.Y.S.2d 903 (Sup 1972).

2 U.S.—Vanderzanden v. Lowell School Dist. No. 71, 369 F. Supp. 67 (D. Or. 1973).
Ariz.—McClanahan v. Cochise College, 25 Ariz. App. 13, 540 P.2d 744 (Div. 2 1975).

3 U.S.—Bogart v. Unified School Dist. No. 298 of Lincoln County, Kansas, 432 F. Supp. 895 (D. Kan. 1977).

4 U.S.—Bogart v. Unified School Dist. No. 298 of Lincoln County, Kansas, 432 F. Supp. 895 (D. Kan. 1977); Potemra v. Ping, 462 F. Supp. 328 (S.D. Ohio 1978).
Incorporation of charges satisfied due process
A reference in a teacher dismissal letter incorporating a statement of charges against the teacher was tantamount to a written adjudication and satisfied the requirements of due process.
U.S.—Barndt v. Wissahickon School Dist., 475 F. Supp. 503 (E.D. Pa. 1979), aff'd, 615 F.2d 1352 (3d Cir. 1980).

5 U.S.—Staton v. Mayes, 552 F.2d 908 (10th Cir. 1977).

6 N.Y.—Soucy v. Board of Ed. of North Colonie Central School Dist. No. 5, 41 A.D.2d 984, 343 N.Y.S.2d 624 (3d Dep't 1973).

7 Fla.—Arnette v. Florida State University, 413 So. 2d 806, 4 Ed. Law Rep. 685 (Fla. 1st DCA 1982).

8 Wash.—Meyers v. Newport Consol. Joint School Dist. No. 56-415, 31 Wash. App. 145, 639 P.2d 853, 2 Ed. Law Rep. 557 (Div. 3 1982).

9 Mich.—Arnold v. Crestwood Bd. of Educ., 87 Mich. App. 625, 277 N.W.2d 158 (1978).

10 S.C.—Young v. Charleston County School Dist., 397 S.C. 303, 725 S.E.2d 107, 279 Ed. Law Rep. 477 (2012).

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16D C.J.S. Constitutional Law § 2213

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2213. Students, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4205 to 4217, 4224(1) to 4224(12)

Students have an interest in public education which is protected and may not be taken away without some measure of procedural due process; however, the right to receive an education can be burdened by governmental action, without violating the substantive due process rights of a student, if the action is rationally related to a legitimate state interest.

Public school students retain substantive and procedural due process rights while at school.[1] Generally, a state's extending the right to an education creates a property interest protected by the Due Process Clause of the Fourteenth Amendment,[2] which may not be taken away without some measure of procedural due process.[3] However, it has been found that there is no substantive due process right to a public education[4] and that the right to a public college education is not a fundamental right for the purposes of substantive due process analysis.[5]

A state constitution's grant of a right to a free public education does not create a due process property interest in favor of students to be educated at the school of their choice.[6] Moreover, a student's transfer to an alternative education program does not deny

access to public education and therefore does not violate a Fourteenth Amendment interest.[7] A high school student does not have a property right to take a particular course at an hour convenient to him or her.[8] In addition, the federal constitution's due process guarantees do not protect a student's interest in participating in graduation.[9]

The right to receive an education can be burdened by government action, without violating the substantive due process rights of a student, if the action is rationally related to a legitimate state interest.[10] The constitution does not require that school rules include a specific catalog of prohibited items, so long as their salient characteristics are readily determinable and easily understood,[11] and not every deviation from a school's regulations constitutes a deprivation of due process.[12] On the other hand, school rules and regulations must bear a sufficiently rational relationship to a legitimate purpose to satisfy due process,[13] and statutes and school policies pertaining to students must not create irrebuttable presumptions that contravene the constitutional guaranty.[14]

An expectation of students that a school will continue to promote students performing in a substandard manner is not reasonable and cannot form the basis of a property right.[15] Further, the right to receive a passing grade in a class and not to be charged with plagiarism are not liberty interests protected under the Due Process Clause.[16] However, due process is violated when a graduation exam is fundamentally unfair in that it may have covered matters not taught in the schools of the state.[17]

Residency requirements.

A state or school board may, under the Due Process Clause, impose on a student a reasonable durational residency requirement.[18] Thus, school children have no right to a free public education, under the United States Constitution, that is violated when they are dis-enrolled from a school following a determination that they do not reside in the district.[19]

CUMULATIVE SUPPLEMENT

Cases:

To prevail on claim that special education teacher violated her students' substantive due process right to personal security and freedom from abuse at hands of state officials, parents of these students had to identify conduct that was so brutal, demeaning, and harmful as literally to shock the conscience. U.S.C.A. Const.Amend. 14. Domingo v. Kowalski, 810 F.3d 403 (6th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Smith v. Barber, 316 F. Supp. 2d 992, 188 Ed. Law Rep. 323 (D. Kan. 2004).

2 U.S.—Harris ex rel. Harris v. Pontotoc County School Dist., 635 F.3d 685, 265 Ed. Law Rep. 908 (5th Cir. 2011).
"Liberty" or "property" interest
A public school student's interest in pursuing an education is a due-process protected "liberty" or "property" interest.
U.S.—Demers ex rel. Demers v. Leominster School Dept., 263 F. Supp. 2d 195, 178 Ed. Law Rep. 130 (D. Mass. 2003).

3 U.S.—Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

4 U.S.—Phillips v. City of New York, 775 F.3d 538, 313 Ed. Law Rep. 452 (2d Cir. 2015).

5 U.S.—Hill v. Board of Trustees of Michigan State University, 182 F. Supp. 2d 621, 161 Ed. Law Rep. 497 (W.D. Mich. 2001).

No fundamental right to graduate school

U.S.—Charleston v. Board of Trustees of University of Illinois at Chicago, 741 F.3d 769, 301 Ed. Law Rep. 26 (7th Cir. 2013), cert. denied, 134 S. Ct. 2719, 189 L. Ed. 2d 740 (2014).

Attending dental school not fundamental right

U.S.—Fedorov v. Board of Regents for University of Georgia, 194 F. Supp. 2d 1378, 164 Ed. Law Rep. 165 (S.D. Ga. 2002).

6 U.S.—Mullen v. Thompson, 155 F. Supp. 2d 448, 156 Ed. Law Rep. 526 (W.D. Pa. 2001), order aff'd, 31 Fed. Appx. 77, 163 Ed. Law Rep. 118 (3d Cir. 2002).

7 U.S.—Harris ex rel. Harris v. Pontotoc County School Dist., 635 F.3d 685, 265 Ed. Law Rep. 908 (5th Cir. 2011).

Transfer of student with academic and behavioral problems

U.S.—Turley v. Sauquoit Valley School Dist., 307 F. Supp. 2d 403, 186 Ed. Law Rep. 762 (N.D. N.Y. 2003).

Does not implicate substantive due process rights

The act of transferring a student to an alternative school does not implicate substantive due process rights because the right to attend public school is not a right implicit in the concept of ordered liberty.

U.S.—Marner ex rel. Marner v. Eufaula City School Bd., 204 F. Supp. 2d 1318, 166 Ed. Law Rep. 224 (M.D. Ala. 2002).

8 U.S.—Jeffrey v. Board of Trustees of Bells ISD, 261 F. Supp. 2d 719, 177 Ed. Law Rep. 1000 (E.D. Tex. 2003), aff'd, 96 Fed. Appx. 248 (5th Cir. 2004).

9 U.S.—Bundick v. Bay City Independent School Dist., 140 F. Supp. 2d 735, 154 Ed. Law Rep. 183 (S.D. Tex. 2001).

Pa.—Dissinger v. Manheim Tp. School Dist., 72 A.3d 723, 296 Ed. Law Rep. 521 (Pa. Commw. Ct. 2013), as amended on other grounds, (June 21, 2013).

10 U.S.—Brian A. ex rel. Arthur A. v. Stroudsburg Area School Dist., 141 F. Supp. 2d 502, 154 Ed. Law Rep. 504 (M.D. Pa. 2001).

11 U.S.—Bilbrey v. Brown, 481 F. Supp. 26 (D. Or. 1979).

Rule proscribing "obscene" language

U.S.—Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549, 32 Ed. Law Rep. 1243 (1986).

12 U.S.—Escobar v. State University of New York/College at Old Westbury, 427 F. Supp. 850 (E.D. N.Y. 1977).

13 U.S.—Paine v. Board of Regents of University of Texas System, 355 F. Supp. 199 (W.D. Tex. 1972), judgment aff'd, 474 F.2d 1397 (5th Cir. 1973).

Compulsory immunization

U.S.—Phillips v. City of New York, 775 F.3d 538, 313 Ed. Law Rep. 452 (2d Cir. 2015); Boone v. Boozman, 217 F. Supp. 2d 938, 169 Ed. Law Rep. 247 (E.D. Ark. 2002).

14 U.S.—Hammond v. Marx, 406 F. Supp. 853 (D. Me. 1975).

15 U.S.—Bester v. Tuscaloosa City Bd. of Educ., 722 F.2d 1514, 15 Ed. Law Rep. 118 (11th Cir. 1984).

16 U.S.—Shepard v. Irving, 204 F. Supp. 2d 902, 166 Ed. Law Rep. 171 (E.D. Va. 2002), aff'd in part, rev'd in part on other grounds, 77 Fed. Appx. 615, 182 Ed. Law Rep. 92 (4th Cir. 2003).

17 Ind.—Rene ex rel. Rene v. Reed, 726 N.E.2d 808, 143 Ed. Law Rep. 344 (Ind. Ct. App. 2000).

18 N.C.—Graham v. Mock, 143 N.C. App. 315, 545 S.E.2d 263, 153 Ed. Law Rep. 796 (2001).

19 U.S.—Dunbar v. Hamden Bd. of Educ., 267 F. Supp. 2d 178, 179 Ed. Law Rep. 258 (D. Conn. 2003).

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16D C.J.S. Constitutional Law § 2214

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2214. Student extracurricular activities; athletics

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4208, 4224(4), 4226

There is no student right or property interest in participation in extracurricular activities which is protected, and participation in interscholastic athletics, standing alone, does not rise to the level of a separate property or liberty interest to which a student is entitled and of which he or she cannot be deprived without due process.

Generally, there is no student right or property interest in participation in extracurricular activities which is protected.[1] Thus, the privilege of participating in interscholastic activities falls outside the protection of due process.[2]

Participation in interscholastic athletics, standing alone, is but one stick in the bundle of the educational process and does not rise to the level of a separate property or liberty interest to which a student is entitled and of which he or she cannot be deprived without due process.[3] Thus, participation in interscholastic high school competitions is not a substantial right under state due process protection unless the denial is based on an abuse of a student's fundamental rights or predicated on a suspect

basis.[4] Moreover, the opportunity to earn, or the possibility of obtaining, an athletic scholarship is too speculative to elevate participation in interscholastic sports to the level of an interest protected by due process.[5]

Footnotes

1 U.S.—Park Hills Music Club, Inc. v. Board of Ed. of City of Fairborn, Greene County, State of Ohio, 512 F. Supp. 1040 (S.D. Ohio 1981); Kirby v. Loyalsock Tp. School Dist., 837 F. Supp. 2d 467, 281 Ed. Law Rep. 234 (M.D. Pa. 2011).

2 U.S.—Marner ex rel. Marner v. Eufaula City School Bd., 204 F. Supp. 2d 1318, 166 Ed. Law Rep. 224 (M.D. Ala. 2002).
W. Va.—Mayo v. West Virginia Secondary Schools Activities Com'n, 223 W. Va. 88, 672 S.E.2d 224, 241 Ed. Law Rep. 457 (2008).

3 Cal.—Ryan v. California Interscholastic Federation-San Diego Section, 94 Cal. App. 4th 1048, 114 Cal. Rptr. 2d 798, 160 Ed. Law Rep. 200 (4th Dist. 2001).
Okla.—Scott v. Oklahoma Secondary School Activities Ass'n, 2013 OK 84, 313 P.3d 891, 299 Ed. Law Rep. 233 (Okla. 2013).
W. Va.—Mayo v. West Virginia Secondary Schools Activities Com'n, 223 W. Va. 88, 672 S.E.2d 224, 241 Ed. Law Rep. 457 (2008).
No due process right to participate in school athletic or social activities
U.S.—James P. v. Lemahieu, 84 F. Supp. 2d 1113, 142 Ed. Law Rep. 233 (D. Haw. 2000).
Intercollegiate athletics
Student athletes had no liberty or property interest in participation in intercollegiate athletics; such participation instead was a privilege not protected by constitutional due process safeguards.
U.S.—Equity In Athletics, Inc. v. Department of Educ., 639 F.3d 91, 267 Ed. Law Rep. 34 (4th Cir. 2011).
Right to public education not synonymous with right to participate in athletics
The right to a public education, even one with a mandatory physical education component, is not synonymous with the right to participate in extracurricular activities, such as interscholastic athletics; although such activities may serve as a beneficial supplement to required physical education, they are by their nature separate from that curriculum.
Mass.—Mancuso v. Massachusetts Interscholastic Athletic Ass'n, Inc., 453 Mass. 116, 900 N.E.2d 518, 241 Ed. Law Rep. 311 (2009)).

4 Fla.—Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So. 2d 1281, 186 Ed. Law Rep. 1025 (Fla. 5th DCA 2004).

5 Cal.—Ryan v. California Interscholastic Federation-San Diego Section, 94 Cal. App. 4th 1048, 114 Cal. Rptr. 2d 798, 160 Ed. Law Rep. 200 (4th Dist. 2001).
La.—Johansen v. Louisiana High School Athletic Ass'n, 916 So. 2d 1081, 205 Ed. Law Rep. 944 (La. Ct. App. 1st Cir. 2005).

16D C.J.S. Constitutional Law § 2215

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2215. Bodily integrity and duty to protect students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4211, 4224(9)

Schoolchildren have a liberty interest in their bodily integrity that is protected by the Due Process Clause although schools generally have no duty under the Due Process Clause to protect students from assaults by other students.

Schoolchildren have a liberty interest in their bodily integrity that is protected by the Due Process Clause,[1] which protects the liberty interest of a child in public school from sexual abuse.[2] Thus, the Due Process Clause of the Fourteenth Amendment clearly protects the right of a child to be free from sexual abuse inflicted by a public school teacher.[3]

On the other hand, deliberate indifference to the safety of a student by a school district, principal, superintendent, and teacher does not constitute a violation of the student's substantive due process rights.[4] In addition, schools generally have no duty under the Due Process Clause to protect students from assaults by other students, even when the school knows or should know of the danger presented,[5] although a claim has been stated for a deprivation of the substantive due process right to bodily

integrity, pursuant to the state-created danger exception to the general rule precluding state responsibility to protect against private violence.[6]

Compulsory attendance laws for public schools have been found not to create an affirmative duty under the Fourteenth Amendment to protect students from the private actions of third parties while they attend school[7] because, unlike criminal incarceration and involuntary commitment to a mental health facility, public education does not impose a sufficient limitation upon students' freedom to act to implicate substantive due process rights by creating a special relationship as would create a duty on the part of the school to protect students.[8] However, it has also been found that by virtue of the custodial relationship between a school and its students created by compulsory school attendance laws, public school officials may owe their students a limited substantive due process duty to protect their students from harm by private actors when the conduct is so extreme as to shock the conscience.[9]

CUMULATIVE SUPPLEMENT

Cases:

No affirmative duty arose on part of school officials, so as to implicate Due Process Clause pursuant to state created danger theory, to protect middle school student who had been bullied, when school told student that he was obliged to return to school, since compulsory attendance laws were necessary enforcement tools, and by themselves could not be the basis to impose constitutional liability on the state. U.S.C.A. Const.Amend. 14. Morgan v. Town of Lexington, MA, 823 F.3d 737 (1st Cir. 2016).

Parents of female middle school students who were subjected to strip searches at school sufficiently alleged deliberate indifference to violations of students' Fourth Amendment rights, as required for school district to be held liable in parents' § 1983 claim, under *Monell*, for school officials' actions; parents alleged that risk of school officials conducting unconstitutional searches was or should have been a highly predictable consequence of the school district's decision to provide its staff no training regarding the Constitution's constraints on searches, and that conducting a "search" within the meaning of the Fourth Amendment was among the usual and recurring tasks that at least some school district employees would be required to perform, since school district expressly vested search authority in all its school officials and notified its students that their persons could be searched. U.S. Const. Amend. 4; 42 U.S.C.A. § 1983. Littell v. Houston Independent School District, 894 F.3d 616 (5th Cir. 2018).

Even assuming that a teacher's conduct in laughing when classmates moved middle school student's desk in class, and a gym teacher's conduct in forcing student to participate in gym class while injured because student did not have a doctor's note, created or increased the danger to student from bullying by classmates and basketball teammates, such conduct by teachers did not shock the conscience, as would be required for county school corporation to be liable to student for a due process violation, on a state-created danger theory, for failure to protect. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983. D.S. v. East Porter County School Corp., 799 F.3d 793 (7th Cir. 2015).

Middle school officials' decision to assign student to same classes as fellow student who had history of bullying her and teacher's decision to have those two students sit at same science table did not rise to level of culpability required to establish substantive due process violation, even though student committed suicide four weeks after science table incident. U.S. Const. Amend. 14. Feucht v. Triad Local Schools Board of Education, 425 F. Supp. 3d 914, 375 Ed. Law Rep. 842 (S.D. Ohio 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Moore v. Willis Independent School Dist., 233 F.3d 871, 149 Ed. Law Rep. 337 (5th Cir. 2000); Hackett v. Fulton County School Dist., 238 F. Supp. 2d 1330, 173 Ed. Law Rep. 841 (N.D. Ga. 2002).

2 U.S.—P.H. v. School Dist. of Kansas City, Missouri, 265 F.3d 653, 157 Ed. Law Rep. 42 (8th Cir. 2001).

3 Ala.—J.B. v. Lawson State Community College, 29 So. 3d 164, 255 Ed. Law Rep. 435 (Ala. 2009).

4 U.S.—Nix v. Franklin County School Dist., 311 F.3d 1373, 171 Ed. Law Rep. 729 (11th Cir. 2002).

A.L.R. Library

Liability of university, college, or other school for failure to protect student from crime, 1 A.L.R.4th 1099.

5 U.S.—Niziol v. Pasco County Dist. School Bd., 240 F. Supp. 2d 1194, 174 Ed. Law Rep. 208 (M.D. Fla. 2002).

Severe teasing

U.S.—Lindsley ex rel. Kolodziejczack v. Girard School Dist., 213 F. Supp. 2d 523, 168 Ed. Law Rep. 299 (W.D. Pa. 2002).

No duty to protect students from private actors

Public schools, as a general matter, do not have a constitutional duty under the Due Process Clause to protect students from private actors.

U.S.—Morrow v. Balaski, 719 F.3d 160, 294 Ed. Law Rep. 451, 98 A.L.R.6th 777 (3d Cir. 2013), cert. denied, 134 S. Ct. 824, 187 L. Ed. 2d 686 (2013); Doe ex rel. Magee v. Covington County School Dist. ex rel. Keys, 675 F.3d 849, 278 Ed. Law Rep. 761 (5th Cir. 2012).

6 U.S.—Gremo v. Karlin, 363 F. Supp. 2d 771, 197 Ed. Law Rep. 250 (E.D. Pa. 2005).

School did not cause state-created danger

A middle school did not cause state-created danger, as an exception to the rule that the Fourteenth Amendment's Due Process Clause did not protect citizens against actions of private persons, by telling a male high school student with a criminal record to stop sexually harassing a female middle school student, which allegedly provoked the male student to harass her more.

U.S.—Pahssen v. Merrill Community School Dist., 668 F.3d 356, 277 Ed. Law Rep. 21 (6th Cir. 2012).

7 U.S.—Castaldo v. Stone, 192 F. Supp. 2d 1124, 163 Ed. Law Rep. 688 (D. Colo. 2001); Niziol v. Pasco County Dist. School Bd., 240 F. Supp. 2d 1194, 174 Ed. Law Rep. 208 (M.D. Fla. 2002).

Tex.—Fike v. Miller, 437 S.W.3d 640, 308 Ed. Law Rep. 532 (Tex. App. Tyler 2014).

8 U.S.—Ireland v. Jefferson County Sheriff's Dept., 193 F. Supp. 2d 1201, 163 Ed. Law Rep. 824 (D. Colo. 2002).

Compulsory school attendance laws did not create special relationship

U.S.—Doe ex rel. Magee v. Covington County School Dist. ex rel. Keys, 675 F.3d 849, 278 Ed. Law Rep. 761 (5th Cir. 2012).

9 U.S.—Medina Perez v. Fajardo, 263 F. Supp. 2d 291, 178 Ed. Law Rep. 216 (D.P.R. 2003).

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16D C.J.S. Constitutional Law § 2216

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2216. Student dress and grooming

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4209(2)

A high school dress code does not implicate a fundamental right for purposes of substantive due process analysis although grooming regulations must not be so indefinite and uncertain as to violate a student's due process rights.

A high school dress code does not implicate a fundamental right for purposes of substantive due process analysis.[1] The right to wear blue jeans to school, for instance, is not fundamental, and thus, the rational relationship test, as opposed to the strict scrutiny test, applies to a public school dress code prohibiting the wearing of blue jeans.[2] A public school dress code prohibiting "offensive writing, pictures, or symbols" does not violate substantive due process on its face, as a school can constitutionally prohibit the core of offensive expression although the code cannot be so vague as to leave students or parents without knowledge of the nature of the clothing prohibited on the premises.[3] Moreover, a school district's mandatory school uniform policy does not unconstitutionally encroach on students' due process rights, as the policy causes only minimal intrusion on students' liberty interest in wearing clothes that they choose, and the policy serves a legitimate and compelling educational objective of improving the learning climate of schools.[4]

On the other hand, school requirements to cut one's hair involve a student's bodily integrity, for due process purposes, and require a change to a body part that affects the student when he or she is not in school.[5] However, it has also been found that regulations establishing grooming standards,[6] such as those pertaining to hair length,[7] do not contravene due process of law. In any event, grooming regulations must not be so indefinite and uncertain as to violate a student's due process rights.[8]

Footnotes

1 U.S.—Long v. Board of Educ. of Jefferson County, Ky., 121 F. Supp. 2d 621, 149 Ed. Law Rep. 157 (W.D. Ky. 2000), judgment aff'd, 21 Fed. Appx. 252, 160 Ed. Law Rep. 392 (6th Cir. 2001).

A.L.R. Library

Validity of regulation by public-school authorities as to clothes or personal appearance of pupils, 58 A.L.R.5th 1.

2 Conn.—Byars v. City of Waterbury, 47 Conn. Supp. 342, 795 A.2d 630, 164 Ed. Law Rep. 311 (Super. Ct. 2001).

T-shirts

A student lacks any cognizable substantive due process claim based on high school administrators' refusal to allow him to wear particular t-shirts to school.

U.S.—Boroff v. Van Wert City Bd. of Educ., 220 F.3d 465, 146 Ed. Law Rep. 629, 2000 FED App. 0249P (6th Cir. 2000).

3 U.S.—Smith ex rel. Lanham v. Greene County School Dist., 100 F. Supp. 2d 1354, 145 Ed. Law Rep. 368 (M.D. Ga. 2000).

Code did not lack clarity

A school dress code prohibiting clothing that indicated gang affiliation, created a safety hazard, or disrupted school activities did not violate the Due Process Clause of the Fourteenth Amendment for lack of clarity.

U.S.—Dariano v. Morgan Hill Unified School Dist., 767 F.3d 764, 309 Ed. Law Rep. 137 (9th Cir. 2014), cert. denied, 135 S. Ct. 1700, 316 Ed. Law Rep. 22 (2015).

Clothing displaying Confederate flag banned

A student had adequate notice that public school dress codes banned clothing displaying the Confederate flag, and thus, the dress codes were not unconstitutionally vague as applied to the student as would violate due process, even though the codes did not expressly ban clothing containing images of the Confederate flag, where school officials explicitly informed the student on multiple occasions that Confederate flag shirts were not permitted under the dress codes, and the student was aware that the dress codes banned Confederate flag apparel.

U.S.—Hardwick ex rel. Hardwick v. Heyward, 711 F.3d 426, 290 Ed. Law Rep. 484 (4th Cir. 2013), cert. denied, 134 S. Ct. 201, 187 L. Ed. 2d 46 (2013).

4 U.S.—Littlefield v. Forney Ind. School Dist., 108 F. Supp. 2d 681 (N.D. Tex. 2000), aff'd, 268 F.3d 275, 158 Ed. Law Rep. 36 (5th Cir. 2001).

5 Conn.—Byars v. City of Waterbury, 47 Conn. Supp. 342, 795 A.2d 630, 164 Ed. Law Rep. 311 (Super. Ct. 2001).

6 U.S.—Neuhaus v. Torrey, 310 F. Supp. 192 (N.D. Cal. 1970).

7 U.S.—Gere v. Stanley, 453 F.2d 205 (3d Cir. 1971).

Ariz.—Pendley v. Mingus Union High School Dist. No. 4 of Yavapai County, 109 Ariz. 18, 504 P.2d 919 (1972).

8 U.S.—Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970).

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16D C.J.S. Constitutional Law § 2217

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2217. Disabled students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4214, 4215

To deprive a handicapped child of an equal educational opportunity would be an unconstitutional denial of due process.

To deprive a handicapped child of an equal educational opportunity would be an unconstitutional denial of due process.[1] The policy established in federal and state regulations that handicapped children be educated along with nonhandicapped children to the extent possible has a rational basis to promote a valid state goal and does not violate due process.[2] However, residents of a school for the mentally disabled do not have a substantive due process right to receive treatment from state officials in the least restrictive setting,[3] and no violation of due process rights is shown in the action of educational officers in limiting special education services to those deemed by the officers to require them.[4]

Footnotes

1 N.D.—In Interest of G. H., 218 N.W.2d 441 (N.D. 1974).

Protection from arbitrary exclusion

The Due Process Clause protects against the arbitrary exclusion of disabled students from public educational institutions in light of the property and liberty interests in receiving a public education.

U.S.—Toledo v. Sanchez, 454 F.3d 24, 211 Ed. Law Rep. 25 (1st Cir. 2006).

2 N.C.—Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687, 5 Ed. Law Rep. 658 (1982).

3 U.S.—Garrity v. Gallen, 522 F. Supp. 171 (D.N.H. 1981).

4 U.S.—Akers v. Bolton, 531 F. Supp. 300, 2 Ed. Law Rep. 1036 (D. Kan. 1981).

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16D C.J.S. Constitutional Law § 2218

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2218. Postsecondary education

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4224(1) to 4224(12)

The admissions procedure employed by a state university must conform to the constitutional requirement of due process, but so long as the rules and standards for admission to a school are fair and reasonable and are applied equally and fairly to all applicants, there is no violation of due process of law.

The admissions procedure employed by a state university must conform to the constitutional requirement of due process,[1] but so long as the rules and standards for admission to a school are fair and reasonable and are applied equally and fairly to all applicants, there is no violation of due process of law.[2] While a student does not have a liberty interest in continued enrollment at a medical school, however, a student does have a protected liberty interest in not being terminated from educational studies because of a constitutionally impermissible purpose, such as race.[3]

A decision by a university not to award a degree is consistent with the requirements of due process and is not arbitrary and capricious if it is arrived at honestly and with due consideration.[4] Where a student's grades are insufficient to comply with

a school's policy requiring minimum grades, the student's rights are not violated when he or she is not permitted to graduate because of academic deficiencies.[5] When a student fails an examination required to complete the final two years of a program, a decision to dismiss the student without permitting a reexamination does not violate due process when it is made conscientiously with clear deliberation, based on an evaluation of the student's entire academic career at the university.[6]

Grievance procedures.

Even assuming that a public university's medical school fails to follow its own regulations in the adjudication of a student's grievance, this failure would not, by itself, give rise to a constitutional due process claim under the Fourteenth Amendment.[7]

CUMULATIVE SUPPLEMENT

Cases:

University's decision to not give graduate student credit for required student-teaching assignment, which she left before completing due to differences with the classroom teacher supervising her, thereby depriving her of a degree from the university and a teaching certificate, was not arbitrary and capricious and did not shock the conscience, and therefore did not violate her substantive due process rights. U.S. Const. Amend. 14. Kerr v. Marshall University Board of Governors, 824 F.3d 62 (4th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Grove v. Ohio State University, College of Veterinary Medicine, 424 F. Supp. 377 (S.D. Ohio 1976). As to the right to a public college education as not being a fundamental right for the purposes of substantive due process analysis, see § 2213.

2 N.Y.—Glassman v. New York Medical College, 64 Misc. 2d 466, 315 N.Y.S.2d 1 (Sup 1970).
Medical school
An unsuccessful applicant had no property or liberty interest in admission to a state medical school, and thus, the applicant had no right to the due process protections of either the state or federal constitution regarding the admissions process.
La.—Baker v. LSU Health Sciences Center Institute of Professional Educ., 889 So. 2d 1178, 194 Ed. Law Rep. 1032 (La. Ct. App. 2d Cir. 2004).

3 U.S.—Thomas v. Gee, 850 F. Supp. 665, 91 Ed. Law Rep. 577 (S.D. Ohio 1994).
Interest in continuing education not protected by substantive due process
U.S.—Bell v. Ohio State University, 351 F.3d 240, 183 Ed. Law Rep. 60, 2003 FED App. 0434P (6th Cir. 2003).

4 Wash.—Enns v. Board of Regents of University of Washington, 32 Wash. App. 898, 650 P.2d 1113, 6 Ed. Law Rep. 838 (Div. 1 1982).
A.L.R. Library
Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

5 Colo.—Goldberg v. Board of Regents of University of Colorado, 43 Colo. App. 340, 603 P.2d 974 (App. 1979).
Wash.—Enns v. Board of Regents of University of Washington, 32 Wash. App. 898, 650 P.2d 1113, 6 Ed. Law Rep. 838 (Div. 1 1982).

6 U.S.—Regents of University of Michigan v. Ewing, 474 U.S. 214, 106 S. Ct. 507, 88 L. Ed. 2d 523, 28 Ed. Law Rep. 720 (1985).

7 U.S.—Trotter v. Regents of University of New Mexico, 219 F.3d 1179, 146 Ed. Law Rep. 68, 47 Fed. R. Serv. 3d 691 (10th Cir. 2000).

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16D C.J.S. Constitutional Law § 2219

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2219. Discipline, suspension, or expulsion of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4209(3), 4216, 4224(7)

In matters of student discipline in public schools, the constitution requires that the act be consonant with due process of law although due process requirements do not prevent reasonable regulation by schools in disciplining students.

Protected property rights are affected and due process protections are required when school discipline imposed amounts to a deprivation of access to education.[1] Suspensions,[2] expulsions,[3] and even involuntary disciplinary transfers[4] of public school students involve protected interests of the students and are of sufficient significance as to warrant the shelter of due process protection. It should be noted that because the decision to suspend a student is an executive act, any deprivation of the state-created right to attend school is generally protected only by the guarantee of procedural due process and does not implicate substantive due process rights.[5] Further, the right to a free public education is a right which belongs to the student, and not the student's parents, and when a student is suspended or expelled, it is the student who is entitled to due process because it is the student, not his or her parents, who has a right to a free public education.[6]

Due process requires school districts to establish procedures to protect against unfair or mistaken findings of misconduct and arbitrary exclusion from school.[7] Generally, in order to contravene constitutional substantive due process protections, student disciplinary actions must be arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.[8] In the context of school discipline, a substantive due process claim will succeed only in the rare case when there is no rational relationship between the punishment and the offense.[9]

Due process requirements do not prevent reasonable regulation by schools in disciplining students.[10] Moreover, due process is not affronted when students are disciplined for violations of unwritten rules when such misconduct challenges lawful school authority and undermines the orderly operation of the school.[11] Statutes and school rules which authorize the discipline, suspension, or expulsion of students must be sufficiently clear as to give a fair warning of the conduct prohibited, and they must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies.[12] However, given a school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions in order to satisfy due process requirements.[13]

Reputational interest.

Minimal requirements of due process must be satisfied when a public school's action tarnishes a student's reputation,[14] and a punishment imposed which may harm a student's good name and reputation may not be imposed without minimal requirements of due process being satisfied.[15] It has also been found that in the absence of any other deprivation of a protected property or liberty interest, a public school student has no liberty interest in his or her reputation that is entitled to due process protection.[16]

Private schools.

Before a private school's student disciplinary procedure can be circumscribed by all of the constitutional safeguards of due process, it must first be shown that the State is involved in the activities of the school to a significant degree.[17] Further, there is no absolute right to due process in a private college's disciplinary action when the student admits the charges necessary to justify his or her punishment.[18]

CUMULATIVE SUPPLEMENT

Cases:

Suspension of student following a fight with another student did not expose student to danger, and therefore there was no constitutional violation of student's due process rights from any state-created danger that would support a § 1983 claim against school district and its administrators under *Monell*, where the fight was already over when student was suspended and the suspension caused student no further harm. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983. G.S. v. Penn-Trafford School District, 813 Fed. Appx. 799, 379 Ed. Law Rep. 558 (3d Cir. 2020).

When teacher's allegedly unconstitutional conduct is motivated by legitimate educational or disciplinary goal, that conduct must be clearly extreme and disproportionate to the need presented to be excessive in constitutional sense and to rise to level of violation of students' substantive due process rights. U.S.C.A. Const.Amend. 14. Domingo v. Kowalski, 810 F.3d 403 (6th Cir. 2016).

Public school district's decision to expel high school student because of hit list naming other students, based on district's determination that student posed credible threat of violence, did not violate student's parents' substantive due process rights; although parents had protected liberty interest in determining where student attended high school or whether he attended public school, once they voluntarily enrolled student at the high school, they accepted the school district's and school's policies and reasonable disciplinary measures. U.S. Const. Amend. 14. McNeil v. Sherwood School District 88J, 918 F.3d 700 (9th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Tex.—Stafford Mun. School Dist. v. L.P., 64 S.W.3d 559, 161 Ed. Law Rep. 688 (Tex. App. Houston 14th Dist. 2001).
Previous discipline
Just as a person charged with a crime retains the same due process rights even if she was previously convicted of a similar offense, a student accused of misconduct retains her due process rights even if she had been previously disciplined.
U.S.—Castle v. Appalachian Technical College, 631 F.3d 1194, 264 Ed. Law Rep. 630 (11th Cir. 2011).

2 U.S.—G.C. v. Owensboro Public Schools, 711 F.3d 623, 290 Ed. Law Rep. 527 (6th Cir. 2013).
La.—Christy v. McCalla, 79 So. 3d 293, 276 Ed. Law Rep. 1096 (La. 2011).
Tenn.—Heyne v. Metropolitan Nashville Bd. of Public Educ., 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).

3 U.S.—G.C. v. Owensboro Public Schools, 711 F.3d 623, 290 Ed. Law Rep. 527 (6th Cir. 2013).
La.—Christy v. McCalla, 79 So. 3d 293, 276 Ed. Law Rep. 1096 (La. 2011).
Minn.—In re Expulsion of I.A.L., 674 N.W.2d 741, 185 Ed. Law Rep. 346 (Minn. Ct. App. 2004).

4 U.S.—Everett v. Marcase, 426 F. Supp. 397 (E.D. Pa. 1977).

5 U.S.—Marner ex rel. Marner v. Eufaula City School Bd., 204 F. Supp. 2d 1318, 166 Ed. Law Rep. 224 (M.D. Ala. 2002).

6 Ohio—Nichols v. Western Local Bd. of Edn., 127 Ohio Misc. 2d 30, 2003-Ohio-7359, 805 N.E.2d 206, 185 Ed. Law Rep. 1005 (C.P. 2003).
Parents' liberty interests not implicated by suspension
U.S.—J.S. ex rel. Snyder v. Blue Mountain School Dist., 650 F.3d 915, 271 Ed. Law Rep. 656, 91 A.L.R.6th 687 (3d Cir. 2011).

7 Idaho—Rogers v. Gooding Public Joint School Dist. No. 231, 135 Idaho 480, 20 P.3d 16, 152 Ed. Law Rep. 303 (2001) (overruled on other grounds by, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)).

8 U.S.—Riggan v. Midland Independent School Dist., 86 F. Supp. 2d 647, 142 Ed. Law Rep. 836 (W.D. Tex. 2000).
Decision to expel must be arbitrary, irrational, or motivated by bad faith
U.S.—DeFabio v. East Hampton Union Free School Dist., 623 F.3d 71, 261 Ed. Law Rep. 515 (2d Cir. 2010).
A.L.R. Library
Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action, 28 A.L.R.4th 463.

9 U.S.—Seal v. Morgan, 229 F.3d 567, 148 Ed. Law Rep. 34, 2000 FED App. 0358P (6th Cir. 2000).

10 U.S.—Pegram v. Nelson, 469 F. Supp. 1134 (M.D. N.C. 1979).
La.—Williams v. Turner, 382 So. 2d 1040 (La. Ct. App. 2d Cir. 1980).
Wyo.—Clements v. Board of Trustees of Sheridan County School Dist. No. 2, In Sheridan County, 585 P.2d 197 (Wyo. 1978).
Due process rights not triggered by every time-out and after-school detention
U.S.—Ebonie S. v. Pueblo School Dist. 60, 695 F.3d 1051, 285 Ed. Law Rep. 21 (10th Cir. 2012), cert. denied, 133 S. Ct. 1583, 185 L. Ed. 2d 577 (2013).

11 U.S.—Rhyne v. Childs, 359 F. Supp. 1085 (N.D. Fla. 1973), judgment aff'd, 507 F.2d 675 (5th Cir. 1975).

12 U.S.—Tillman v. Dade County School Bd., 327 F. Supp. 927 (S.D. Fla. 1971).

School district's computer policy not void for vagueness

U.S.—J.S. ex rel. Snyder v. Blue Mountain School Dist., 650 F.3d 915, 271 Ed. Law Rep. 656, 91 A.L.R.6th 687 (3d Cir. 2011).

13 U.S.—Hardwick ex rel. Hardwick v. Heyward, 711 F.3d 426, 290 Ed. Law Rep. 484 (4th Cir. 2013), cert. denied, 134 S. Ct. 201, 187 L. Ed. 2d 46 (2013); Wynar v. Douglas County School Dist., 728 F.3d 1062, 297 Ed. Law Rep. 32 (9th Cir. 2013).

14 U.S.—James P. v. Lemahieu, 84 F. Supp. 2d 1113, 142 Ed. Law Rep. 233 (D. Haw. 2000).

15 La.—McCall v. Bossier Parish School Bd., 785 So. 2d 57, 154 Ed. Law Rep. 995 (La. Ct. App. 2d Cir. 2001).

16 Tex.—Stafford Mun. School Dist. v. L.P., 64 S.W.3d 559, 161 Ed. Law Rep. 688 (Tex. App. Houston 14th Dist. 2001).

17 N.Y.—Kwiatkowski v. Ithaca College, 82 Misc. 2d 43, 368 N.Y.S.2d 973 (Sup 1975).

18 Ky.—Centre College v. Trzop, 127 S.W.3d 562, 185 Ed. Law Rep. 1074 (Ky. 2003), as modified on other grounds, (Jan. 30, 2004) and as modified on other grounds on denial of reh'g, (Mar. 18, 2004).

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16D C.J.S. Constitutional Law § 2220

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

a. Students, in General

§ 2220. Corporal punishment of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4210, 4224(8)

Disciplinary corporal punishment does not per se violate a public school student's substantive due process rights; rather, the corporal punishment of a student rises to the level of a constitutional deprivation under the Due Process Clause only when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.

Disciplinary corporal punishment does not per se violate a public school student's substantive due process rights.[1] It has been noted that the kind of minor injury suffered by a student during the administration of traditional corporal punishment will rarely, if ever, be the kind of injury that would support a federal due process claim for excessive corporal punishment.[2] On the other hand, liberty, within the meaning of the Fourteenth Amendment, is implicated where public school authorities, acting under color of state law, deliberately punish a child for misconduct by restraint and the infliction of appreciable physical pain,[3] and public school students have a substantive due process right to remain free from excessive corporal punishment.[4]

The corporal punishment of a student rises to the level of a constitutional deprivation under the Due Process Clause only when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.[5] The substantive due process inquiry is whether the force applied causes injury so severe, is so disproportionate to the need presented, and is so inspired by malice or sadism, rather than a merely careless or unwise excess of zeal, that it amounts to a brutal and inhumane abuse of official power literally shocking to the conscience.[6] The "shocks the conscience" standard of substantive due process has four elements, including whether there is: (1) a pedagogical justification for the use of force; (2) force utilized excessive to meet the legitimate objective in the situation; (3) force applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm; and (4) a serious injury.[7]

Excessive corporal punishment claims, alleging a violation of substantive due process principles, have an objective and a subjective component, both of which must be met before a school official may be subject to liability: the punishment must objectively be obviously excessive, and the teacher must subjectively intend to use that obviously excessive amount of force in circumstances where it is foreseeable that serious bodily injury could result.[8] In determining whether the amount of force used by a school official in administering corporal punishment is obviously excessive, for purposes of a substantive due process claim, a court considers the totality of the circumstances, examining, in particular: (1) the need for the application of corporal punishment; (2) the relationship between the need and amount of punishment administered; and (3) the extent of the injury inflicted.[9] A constitutional violation under the Due Process Clause will only arise from corporal punishment inflicted on a student if a school employee's actions are malicious, and thus it is the harm, and not the contact, that must be intended.[10]

Postpunishment remedies.

A student's substantive due process rights are not violated by the administration of corporal punishment if the state affords the student adequate postpunishment remedies.[11]

Footnotes

1 U.S.—Hall v. Tawney, 621 F.2d 607 (4th Cir. 1980); Ingraham v. Wright, 525 F.2d 909 (5th Cir. 1976), judgment aff'd, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).

2 U.S.—Neal ex rel. Neal v. Fulton County Bd. of Educ., 229 F.3d 1069, 148 Ed. Law Rep. 86 (11th Cir. 2000).

3 U.S.—Ingraham v. Wright, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).

4 U.S.—Brown ex rel. Brown v. Ramsey, 121 F. Supp. 2d 911, 149 Ed. Law Rep. 392 (E.D. Va. 2000), aff'd, 10 Fed. Appx. 131, 158 Ed. Law Rep. 224 (4th Cir. 2001).

5 U.S.—Gottlieb ex rel. Calabria v. Laurel Highlands School Dist., 272 F.3d 168, 159 Ed. Law Rep. 16 (3d Cir. 2001).

6 U.S.—Muskrat v. Deer Creek Public Schools, 715 F.3d 775, 293 Ed. Law Rep. 29 (10th Cir. 2013).
Sufficient claim of excessive corporal punishment
A high school principal's alleged act of repeatedly striking a 13-year-old student in the head, neck, and ribs with a metal cane, including once on the head as the student was doubled over protecting his chest, when the student was not armed or physically threatening in any manner, supported the student's claim for a violation of his substantive due process right to be free from excessive corporal punishment.
U.S.—Kirkland ex rel. Jones v. Greene County Bd. of Educ., 347 F.3d 903, 182 Ed. Law Rep. 57 (11th Cir. 2003).

7 U.S.—Gottlieb ex rel. Calabria v. Laurel Highlands School Dist., 272 F.3d 168, 159 Ed. Law Rep. 16 (3d Cir. 2001).
Forcefully restraining student not conscience-shocking
U.S.—Golden ex rel. Balch v. Anders, 324 F.3d 650, 175 Ed. Law Rep. 66 (8th Cir. 2003).
Hitting student once with plastic bat not conscience-shocking

U.S.—Gonzales v. Passino, 222 F. Supp. 2d 1277, 170 Ed. Law Rep. 705 (D.N.M. 2002).

Teacher slapping student not conscience-shocking

U.S.—Smith ex rel. Smith v. Half Hollow Hills Cent. School Dist., 298 F.3d 168, 167 Ed. Law Rep. 619, 53 Fed. R. Serv. 3d 1146 (2d Cir. 2002).

8 U.S.—T.W. ex rel. Wilson v. School Bd. of Seminole County, Fla., 610 F.3d 588, 258 Ed. Law Rep. 481 (11th Cir. 2010).

9 U.S.—T.W. ex rel. Wilson v. School Bd. of Seminole County, Fla., 610 F.3d 588, 258 Ed. Law Rep. 481 (11th Cir. 2010); S.S. v. Princeton House Charter School, Inc., 909 F. Supp. 2d 1348, 293 Ed. Law Rep. 202 (M.D. Fla. 2012).

10 U.S.—Gottlieb ex rel. Calabria v. Laurel Highlands School Dist., 272 F.3d 168, 159 Ed. Law Rep. 16 (3d Cir. 2001).

11 U.S.—Moore v. Willis Independent School Dist., 233 F.3d 871, 149 Ed. Law Rep. 337 (5th Cir. 2000).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

b. Proceedings and Review in Proceedings Involving Students

§ 2221. Proceedings and review in proceedings involving students, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

Students within a public school system have been accorded procedural due process, with adequate notice and an opportunity to be heard, in various proceedings.

Students within a public school system have been accorded procedural due process, with adequate notice and an opportunity to be heard, in various proceedings,[1] including those involving a determination of residency,[2] eligibility for participation in interscholastic athletics,[3] and eligibility for and assessment and placement of disabled students in special education classes.[4] As to the latter, due process procedural safeguards extend to the parents and guardians of the disabled child.[5]

Determination of the process due necessitates a balancing of the interests and needs of the student against the interests and resources of the school.[6] In the context of disciplining public school students, for instance, the competing interests to be accommodated in determining what process is due are the student's interest in avoiding unfair or mistaken exclusion from the educational process, and the schools' powerful interest in maintaining the safety of their campuses and preserving their ability

to pursue their educational mission.[7] The allocation of the burden of proof in particular proceedings to parents and students does not constitute a denial of due process.[8]

Footnotes

1 Ohio—Laucher v. Simpson, 28 Ohio App. 2d 195, 57 Ohio Op. 2d 303, 276 N.E.2d 261 (5th Dist. Knox County 1971).

Truancy proceedings

Wash.—Bellevue School Dist. v. E.S., 171 Wash. 2d 695, 257 P.3d 570, 269 Ed. Law Rep. 915 (2011).

Placement of students

U.S.—Smith v. Dallas County Bd. of Ed., 480 F. Supp. 1324 (S.D. Ala. 1979).

2 U.S.—Lister v. Hoover, 655 F.2d 123 (7th Cir. 1981).

Ariz.—Rosenberg v. Arizona Bd. of Regents, 118 Ariz. 489, 578 P.2d 168 (1978).

3 U.S.—In re U. S. ex rel. Missouri State High School Activities Ass'n, 682 F.2d 147, 5 Ed. Law Rep. 383 (8th Cir. 1982).

4 N.C.—Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687, 5 Ed. Law Rep. 658 (1982).

5 U.S.—Jaworski v. Rhode Island Bd. of Regents for Ed., 530 F. Supp. 60, 2 Ed. Law Rep. 705, 10 Fed. R. Evid. Serv. 215 (D.R.I. 1981).

Del.—Plitt v. Madden, 413 A.2d 867 (Del. 1980).

6 Minn.—Abbariao v. Hamline University School of Law, 258 N.W.2d 108 (Minn. 1977).

7 U.S.—Seal v. Morgan, 229 F.3d 567, 148 Ed. Law Rep. 34, 2000 FED App. 0358P (6th Cir. 2000).

As to due process requirements with respect to the discipline of students, generally, see § 2222.

8 U.S.—Stemple v. Board of Ed. of Prince George's County, 464 F. Supp. 258 (D. Md. 1979), judgment aff'd, 623 F.2d 893 (4th Cir. 1980).

Colo.—People v. Y. D. M. (State Report Title: People in Interest of Y.D.M.), 197 Colo. 403, 593 P.2d 1356, 9 A.L.R.4th 112 (1979).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

b. Proceedings and Review in Proceedings Involving Students

§ 2222. Due process requirements with respect to discipline of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

The requirements of procedural due process are applicable with respect to the discipline of students in public educational institutions where such discipline involves the possible imposition of serious sanctions such as suspension or expulsion.

A public school's disciplinary proceedings implicate a student's property and liberty interests, which are protected under the Due Process Clause.[1] Having provided that children in the state have a right to free public education, due process requires that the state not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct occurred.[2] The test for determining how much process is due the public school student in disciplinary proceedings requires consideration of three factors: (1) the cost of the additional procedure sought; (2) the risk of error if it is withheld; and (3) the consequences of error to the person seeking the procedure.[3]

Because federal courts are extremely hesitant to become involved in the public schools' disciplinary decisions, however, only "rudimentary precautions" are commanded by the Due Process Clause, including some kind of notice timely followed by

some kind of hearing,[4] and there is no obligation to provide a full-dress judicial hearing, subject to the rules of evidence or representation by counsel.[5] Accordingly, a school disciplinary hearing need not take the form of a judicial or quasi-judicial trial to satisfy due process, and need not observe the rules of evidence, but must nonetheless reach its decision based upon consideration of the evidence.[6] The Due Process Clause does not necessarily provide the right to secure counsel, the right to confront and cross-examine witnesses supporting the charges, or the right to call witnesses in one's defense.[7]

In applying the Due Process Clause to school disciplinary proceedings, the courts have no authority to order a school district to adopt any procedures beyond those very minimal due process rights applicable and guaranteed by the Fourteenth Amendment,[8] and due process is satisfied if the school procedure is reasonably calculated to be fair to the student and lead to a reliable determination of the factual issues involved.[9] While the due process rights of students charged with misconduct are not coextensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial, the Fourteenth Amendment requires that they be provided with an opportunity to be heard at a meaningful time and in a meaningful manner.[10] A public school official's failure to conform with the procedural requirements governing student suspensions does not by itself constitute a violation of federal due process.[11]

Absent an emergency situation, such precautionary measures should precede removal of a student[12] although due process does not require unyielding time barriers within which school authorities must hold a hearing on a suspension or expulsion or in which a decision is to be made.[13] Moreover, a fundamental requirement of due process in school disciplinary proceedings is that the hearing be accorded before an impartial decision-maker,[14] but the mere fact that the decision-maker is also a school administrative officer does not in itself violate the constitutional guaranty.[15] Due process violations may occur, in student disciplinary cases, when a principal considering discipline is biased or in any way unable to function fairly as the trier-of-fact.[16] However, impartiality is presumed in the school disciplinary context, and due process is not implicated simply because the disciplinarian observed conduct, had some knowledge regarding it, or even investigated prior to the hearing.[17]

Stating a claim.

To state a procedural due process claim in a school discipline context, plaintiffs must show that they have been deprived of a property right without a fair hearing or decision-making process.[18] It has also been considered that to establish a denial of procedural due process, a student must show substantial prejudice from an inadequate procedure.[19]

State university students.

In order to satisfy procedural due process requirements, in connection with the discipline of a state university student, the student: (1) must be advised of the charges against him or her; (2) must be informed of the nature of the evidence against him or her; (3) must be given an opportunity to be heard in his or her own defense; (4) must not be punished except on the basis of substantial evidence; (5) must be permitted the assistance of a lawyer, at least in major disciplinary proceedings; (6) must be permitted to confront and cross-examine the witnesses against him or her; and (7) must be afforded the right to an impartial tribunal, which must make written findings.[20]

CUMULATIVE SUPPLEMENT

Cases:

Male secondary school student received all of the process due to him with regard to his initial suspension and eventual reassignment to an alternative school as result of school board's determination, in disciplinary proceedings, that student had sexually harassed a female classmate; student pointed to school handbook's lack of explicit presumption of innocence or minimum burden of proof and fact he was not provided with a copy of one witness's statement until after the disciplinary hearing, as indicative of his lack of due process, but he was afforded notice and opportunity to be heard, which was all that was required. U.S. Const. Amend. 14. Doe v. Fairfax County School Board, 403 F. Supp. 3d 508, 371 Ed. Law Rep. 993 (E.D. Va. 2019).

Under the Due Process Clause, at a minimum in a student disciplinary action, a student is entitled to know what he is accused of doing and what the basis of the accusation is. U.S. Const. Amend. 14. Felkner v. Rhode Island College, 203 A.3d 433 (R.I. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Ohio—Kresser v. Sandusky Bd. of Edn., 140 Ohio App. 3d 634, 748 N.E.2d 620, 154 Ed. Law Rep. 293 (6th Dist. Erie County 2001).

2 U.S.—Harris ex rel. Harris v. Pontotoc County School Dist., 635 F.3d 685, 265 Ed. Law Rep. 908 (5th Cir. 2011); Remer v. Burlington Area School Dist., 286 F.3d 1007, 163 Ed. Law Rep. 625 (7th Cir. 2002).

3 Ind.—Lake Central School Corp. v. Scartozzi, 759 N.E.2d 1185, 160 Ed. Law Rep. 231 (Ind. Ct. App. 2001).

4 U.S.—Bundick v. Bay City Independent School Dist., 140 F. Supp. 2d 735, 154 Ed. Law Rep. 183 (S.D. Tex. 2001).

Due Process Clause sets floor

The Due Process Clause sets only the floor or lowest level of procedures acceptable in academic disciplinary proceedings.

U.S.—Heyne v. Metropolitan Nashville Public Schools, 655 F.3d 556, 272 Ed. Law Rep. 805 (6th Cir. 2011).

Precision of criminal indictment not required

In a student discipline case, the notice of charges need not be drawn with the precision of a criminal indictment in order to satisfy due process.

U.S.—Butler v. Oak Creek-Franklin School Dist., 172 F. Supp. 2d 1102, 159 Ed. Law Rep. 166 (E.D. Wis. 2001).

A.L.R. Library

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

5 Pa.—Ruane v. Shippensburg University, 871 A.2d 859, 197 Ed. Law Rep. 309 (Pa. Commw. Ct. 2005).

Formalities of trials not required

Mo.—Korte v. Curators of University of Missouri, 316 S.W.3d 481, 259 Ed. Law Rep. 287 (Mo. Ct. App. W.D. 2010).

6 U.S.—Butler v. Oak Creek-Franklin School Dist., 172 F. Supp. 2d 1102, 159 Ed. Law Rep. 166 (E.D. Wis. 2001).

7 U.S.—Bundick v. Bay City Independent School Dist., 140 F. Supp. 2d 735, 154 Ed. Law Rep. 183 (S.D. Tex. 2001).

8 U.S.—Everett v. Marcase, 426 F. Supp. 397 (E.D. Pa. 1977).

9 U.S.—Gardenhire v. Chalmers, 326 F. Supp. 1200 (D. Kan. 1971); Lopez v. Williams, 372 F. Supp. 1279 (S.D. Ohio 1973), judgment aff'd, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

10 U.S.—Castle v. Appalachian Technical College, 631 F.3d 1194, 264 Ed. Law Rep. 630 (11th Cir. 2011).

11 U.S.—Martin v. Shawano-Gresham School Dist., 295 F.3d 701, 167 Ed. Law Rep. 61 (7th Cir. 2002).

Fla.—L.P.M. v. School Bd. of Seminole County, 753 So. 2d 130, 143 Ed. Law Rep. 411 (Fla. 5th DCA 2000).

12 U.S.—Hatch v. Goerke, 502 F.2d 1189 (10th Cir. 1974).

13 U.S.—Sullivan v. Houston Independent School Dist., 475 F.2d 1071 (5th Cir. 1973).

14 U.S.—Winnick v. Manning, 460 F.2d 545 (2d Cir. 1972).

15 U.S.—Winnick v. Manning, 460 F.2d 545 (2d Cir. 1972); Murray v. West Baton Rouge Parish School Bd., 472 F.2d 438 (5th Cir. 1973).
N.Y.—Ladson v. Board of Ed., Union Free School Dist. No. 9, Town of Hempstead, 67 Misc. 2d 173, 323 N.Y.S.2d 545 (Sup 1971).

16 U.S.—Riggan v. Midland Independent School Dist., 86 F. Supp. 2d 647, 142 Ed. Law Rep. 836 (W.D. Tex. 2000).

No bias shown on part of principal

The fact that a high school principal who acted as a prosecutor at the expulsion hearing of a student might have been biased because he was a target of a conspiracy in which the student was allegedly initially involved, but from which he later withdrew, to enter the high school with guns and shoot several students and school officials, did not violate the student's procedural due process rights.

U.S.—Remer v. Burlington Area School Dist., 286 F.3d 1007, 163 Ed. Law Rep. 625 (7th Cir. 2002).

17 U.S.—Jennings v. Wentzville R-IV School Dist., 397 F.3d 1118, 195 Ed. Law Rep. 461 (8th Cir. 2005).

18 U.S.—Long v. Board of Educ. of Jefferson County, Ky., 121 F. Supp. 2d 621, 149 Ed. Law Rep. 157 (W.D. Ky. 2000), judgment aff'd, 21 Fed. Appx. 252, 160 Ed. Law Rep. 392 (6th Cir. 2001).

19 U.S.—Porter ex rel. LeBlanc v. Ascension Parish School Bd., 301 F. Supp. 2d 576, 185 Ed. Law Rep. 585 (M.D. La. 2004), judgment aff'd, 393 F.3d 608, 194 Ed. Law Rep. 497 (5th Cir. 2004).

20 U.S.—Gomes v. University of Maine System, 304 F. Supp. 2d 117, 186 Ed. Law Rep. 123 (D. Me. 2004).

Due process prior to revocation of degree

U.S.—Goodreau v. Rector and Visitors of University of Virginia, 116 F. Supp. 2d 694, 148 Ed. Law Rep. 191 (W.D. Va. 2000).

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§ 2223. Suspension of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

A public school student threatened with suspension from school is entitled to the protections of procedural due process, although the process required is minimal, unless the suspension is to exceed 10 days, whereby formal procedures may be required.

A public school student threatened with suspension from school is entitled to the protections of procedural due process[1] although the process required is minimal.[2] Under the Due Process Clause, although notice and a hearing are required before a student may be excluded from school, these procedures need not be as exacting as those found in the criminal or juvenile systems.[3] At a minimum, however, due process requires that a student facing suspension and consequent interference with a protected property interest be given some kind of notice and afforded some kind of hearing.[4] It has also been found that due process of law in the decision to suspend a public school student requires that there be sufficient cause determined through fundamentally fair procedures and that due process of law demands that the administrator who imposes a suspension on a public school student must make a fair and unbiased attempt to determine what happened and if it justifies suspension.[5] As a general rule, the due

process hearing, for a public school student's suspension, should be given before removal from the school unless the student's presence is dangerous or disruptive.[6]

Specifically, due process requires, in connection with the suspension of a public school student for 10 days or less, that the student be given, albeit informally, oral or written notice of the charge against him or her and, if the student denies the charge, an explanation of the evidence the authorities have and an opportunity to present his or her side of the story.[7] The hearing afforded to a public school student facing a suspension of 10 days or less need not be a formal one in which the student is afforded an opportunity to secure counsel, call witnesses, or cross-examine witnesses, in order to comport with due process;[8] instead, the hearing can be an informal give-and-take between the student and the disciplinarian.[9] There need be no delay between the time notice is given and the time of the hearing since in the great majority of the cases the disciplinarian may discuss the alleged misconduct with the student minutes after it has occurred. Students whose presence imposes a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school, and in such cases, the necessary notice and rudimentary hearing should follow as soon as practicable.[10] Notice as to the identity of accusers and the opportunity to cross-examine accusers is not part of the due process requirement for the suspension of a student from school for 10 or fewer days.[11] In addition, due process does not preclude the use of hearsay testimony in suspension proceedings, and a student is not denied due process in suspension proceedings when the school fails to provide a list of witnesses prior to the hearing.[12]

When the suspension is to exceed 10 days, formal procedures may be required.[13] Factors in determining whether additional process is required prior to a public school student's long-term suspension or expulsion, beyond that required for short-term suspension, are: (1) the private interest that will be affected by the official action; (2) the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the fiscal and administrative burden, that additional or substitute procedural requirements would entail.[14] In order to satisfy due process requirements for a long-term school suspension: (1) the student must receive notice of the charges against him or her; (2) there must be a hearing, at which the student may present a defense and testimony or statements of witnesses on his or her behalf; (3) the student should be given the names of witnesses against him or her and a summary of the testimony each is expected to give; and (4) if the hearing is not before the body that will make the ultimate disciplinary decision, then the hearing body should file a written report of its findings and make the report available to the student.[15]

Substantial and competent evidence standard.

Use of the substantial and competent evidence standard of proof, as opposed to a preponderance of the evidence, in public school suspension hearings does not violate a student's constitutional right to due process. A faithful adherence to the substantial and competent evidence standard of proof assures the protection of a student's constitutionally protected interests in a suspension hearing where the burden of proof and evidentiary rules imposed are not as stringent as in a formal trial.[16]

Notice of charges.

Due process requires that a public school student facing suspension be made aware of charges against him so that he or she may prepare a proper defense.[17] Before suspending a student, due process requires school officials to provide the student with notice both of the specific charge, that is, the specific rule allegedly violated, and of the specific alleged conduct that is said to violate the rule. Notice to a student before a suspension need only be sufficiently specific to advise the student and his or her counsel of the activities or incidents which have given rise to the proceeding and which will form the basis for the hearing.[18] When a public school student facing suspension is well aware of the charges against him or her, facially inadequate notice does not deprive the student's due process rights.[19]

CUMULATIVE SUPPLEMENT

Cases:

School district did not violate seventh-grade student's procedural due process rights by suspending him from school for two days for sexually harassing two disabled sixth-grade students off of school grounds, regardless of whether school informed him of specific nature of allegations or how his conduct violated school rules, or whether school provided him adequate opportunity to gather relevant evidence to rebut charges, where seventh-grade student received informal notice of charges and opportunity to tell his side of the story. U.S. Const. Amend. 14. C.R. v. Eugene School District 4J, 835 F.3d 1142 (9th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Heyne v. Metropolitan Nashville Public Schools, 655 F.3d 556, 272 Ed. Law Rep. 805 (6th Cir. 2011); Demers ex rel. Demers v. Leominster School Dept., 263 F. Supp. 2d 195, 178 Ed. Law Rep. 130 (D. Mass. 2003).

A.L.R. Library

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

2 U.S.—Martin v. Shawano-Gresham School Dist., 295 F.3d 701, 167 Ed. Law Rep. 61 (7th Cir. 2002).

3 Idaho—Rogers v. Gooding Public Joint School Dist. No. 231, 135 Idaho 480, 20 P.3d 16, 152 Ed. Law Rep. 303 (2001) (overruled on other grounds by, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)).

4 U.S.—Porter v. Ascension Parish School Bd., 393 F.3d 608, 194 Ed. Law Rep. 497 (5th Cir. 2004).

5 Cal.—Thompson v. Sacramento City Unified School Dist., 107 Cal. App. 4th 1352, 132 Cal. Rptr. 2d 748, 175 Ed. Law Rep. 300 (3d Dist. 2003).

6 U.S.—G.C. v. Owensboro Public Schools, 711 F.3d 623, 290 Ed. Law Rep. 527 (6th Cir. 2013); Castle v. Appalachian Technical College, 631 F.3d 1194, 264 Ed. Law Rep. 630 (11th Cir. 2011).

7 U.S.—Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); G.C. v. Owensboro Public Schools, 711 F.3d 623, 290 Ed. Law Rep. 527 (6th Cir. 2013).

Tenn.—Heyne v. Metropolitan Nashville Bd. of Public Educ., 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).

Substantive due process was not violated

Substantive due process was not violated in connection with a high school senior's 10-day disciplinary suspension at the end of the school year; the student did not have a fundamental right to attend school, the commencement ceremony, or other graduation events, and the suspension was rationally related to his offense involving inappropriate and disrespectful behavior toward a school official.

U.S.—Posthumus v. Board of Educ. of Mona Shores Public Schools, 380 F. Supp. 2d 891, 201 Ed. Law Rep. 184 (W.D. Mich. 2005).

8 U.S.—Heyne v. Metropolitan Nashville Public Schools, 655 F.3d 556, 272 Ed. Law Rep. 805 (6th Cir. 2011).

9 U.S.—Hammock ex rel. Hammock v. Keys, 93 F. Supp. 2d 1222, 143 Ed. Law Rep. 915 (S.D. Ala. 2000); Riggan v. Midland Independent School Dist., 86 F. Supp. 2d 647, 142 Ed. Law Rep. 836 (W.D. Tex. 2000).

10 U.S.—Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

11 U.S.—Granger v. Klein, 197 F. Supp. 2d 851 (E.D. Mich. 2002).

12 Miss.—Covington County v. G.W., 767 So. 2d 187, 147 Ed. Law Rep. 752 (Miss. 2000).

13 U.S.—Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

Tex.—Galveston Independent School Dist. v. Boothe, 590 S.W.2d 553 (Tex. Civ. App. Houston 1st Dist. 1979).

Hearing at meaningful time and in meaningful manner

Tenn.—Heyne v. Metropolitan Nashville Bd. of Public Educ., 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).

14 U.S.—Wynar v. Douglas County School Dist., 728 F.3d 1062, 297 Ed. Law Rep. 32 (9th Cir. 2013); Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 151 Ed. Law Rep. 743 (10th Cir. 2001).

15 U.S.—J.S. ex rel. Duck v. Isle of Wight County School Bd., 362 F. Supp. 2d 675, 197 Ed. Law Rep. 169 (E.D. Va. 2005).

16 N.Y.—Board of Educ. of City School Dist. of City of New York v. Mills, 293 A.D.2d 37, 741 N.Y.S.2d 589, 164 Ed. Law Rep. 851 (3d Dep't 2002).

17 U.S.—Smith v. Barber, 316 F. Supp. 2d 992, 188 Ed. Law Rep. 323 (D. Kan. 2004).

18 U.S.—Butler v. Oak Creek-Franklin School Dist., 172 F. Supp. 2d 1102, 159 Ed. Law Rep. 166 (E.D. Wis. 2001).

19 U.S.—Smith v. Barber, 316 F. Supp. 2d 992, 188 Ed. Law Rep. 323 (D. Kan. 2004).

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§ 2224. Expulsion of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

To comport with due process, expulsion procedures must provide the student with notice of the charges against him or her, notice of the time of the hearing, and a full opportunity to be heard but need not take the form of a judicial or quasi-judicial trial.

To comport with due process, expulsion procedures must provide the student with notice of the charges against him or her, notice of the time of the hearing, and a full opportunity to be heard but need not take the form of a judicial or quasi-judicial trial.[1] The hearing should be held sufficiently after the giving of the notice to enable the student to prepare a response,[2] at which the student has the opportunity to refute the factual basis for the reasons advanced,[3] by presenting witnesses on his or her own behalf, and at which the student can confront and cross-examine accusing school officials and adverse witnesses.[4]

On the other hand, it has been found that a student facing expulsion does not have a procedural due process right to cross-examination, as the traditional role of cross-examination, establishing reliability, may be satisfied in the expulsion setting

through the preliminary interviewing of a witness by school officials, who have extensive experience with juveniles.[5] It has also been found that a student threatened with expulsion based on statements of other students does not have the due process right to learn the other student's identities, as the disclosure may result in ostracism and reprisal.[6] In regard to the latter requirement, due process does not preclude basing expulsions on hearsay evidence[7] although where there is a factual dispute on critical issues that will determine the propriety of an expulsion, due process requires that readily available testimony be presented to the fact-finders in person, at least in the absence of any extenuating circumstances.[8] A student's absence from his or her expulsion hearing does not impose on the school principal, who has recommended expulsion and submits evidence, a procedural due process obligation to present mitigating evidence on the student's behalf.[9]

Substantial evidence standard.

Due process requires that a university base the expulsion of a student on substantial evidence.[10]

Waiver.

A student is not entitled to a due process hearing where the student freely and voluntarily admits the charges against him or her and the student's mother knowingly and voluntarily waives the student's right to an expulsion hearing.[11]

Footnotes

1 U.S.—Remer v. Burlington Area School Dist., 286 F.3d 1007, 163 Ed. Law Rep. 625 (7th Cir. 2002).
Minimum of notice and opportunity to be heard
Mich.—Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ. (On Remand), 293 Mich. App. 506, 810 N.W.2d 95, 277 Ed. Law Rep. 1153 (2011).
Posttermination hearing procedure adequate
U.S.—Fenje v. Feld, 301 F. Supp. 2d 781, 185 Ed. Law Rep. 609 (N.D. Ill. 2003), aff'd, 398 F.3d 620, 195 Ed. Law Rep. 469 (7th Cir. 2005).
A.L.R. Library
Right of student to hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

2 U.S.—Fielder v. Board of Ed. of School Dist. of Winnebago in Thurston County in State of Neb., 346 F. Supp. 722 (D. Neb. 1972).
N.Y.—Ryan v. Hofstra University, 67 Misc. 2d 651, 324 N.Y.S.2d 964 (Sup 1971), opinion supplemented, 68 Misc. 2d 890, 328 N.Y.S.2d 339 (Sup 1972).
Student had adequate notice of charges and evidence against him
Ill.—Camlin v. Beecher Community School Dist., 339 Ill. App. 3d 1013, 274 Ill. Dec. 331, 791 N.E.2d 127, 178 Ed. Law Rep. 435 (3d Dist. 2003).
Timeliness
Expulsion proceedings that are initiated within a reasonable period after the alleged misconduct and that do not result in suspension for more than the 15-day statutory maximum do not violate the student's due process right to timely proceedings.
Minn.—In re Expulsion of I.A.L., 674 N.W.2d 741, 185 Ed. Law Rep. 346 (Minn. Ct. App. 2004).

3 U.S.—Fielder v. Board of Ed. of School Dist. of Winnebago in Thurston County in State of Neb., 346 F. Supp. 722 (D. Neb. 1972).

4 U.S.—Wynar v. Douglas County School Dist., 728 F.3d 1062, 297 Ed. Law Rep. 32 (9th Cir. 2013).
Right to present evidence and question witnesses
S.C.—Stinney v. Sumter School Dist. 17, 391 S.C. 547, 707 S.E.2d 397, 266 Ed. Law Rep. 515 (2011).

5 U.S.—B.S. ex rel. Schneider v. Board of School Trustees, Fort Wayne Community Schools, 255 F. Supp. 2d 891, 176 Ed. Law Rep. 659 (N.D. Ind. 2003).

6 U.S.—Newsome v. Batavia Local School Dist., 842 F.2d 920, 45 Ed. Law Rep. 1037 (6th Cir. 1988).

7 U.S.—McClain v. Lafayette County Bd. of Ed., 673 F.2d 106, 3 Ed. Law Rep. 298 (5th Cir. 1982).

Wis.—Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334, 4 Ed. Law Rep. 1294, 30 A.L.R.4th 926 (Ct. App. 1982).

Written reports by police and assistant principal

A public school student could be expelled for marijuana possession based on a police report and an assistant principal's report which followed a search of the student's vehicle; due process did not require that additional evidence be presented or that a police officer be called at the expulsion hearing.

U.S.—Hammock ex rel. Hammock v. Keys, 93 F. Supp. 2d 1222, 143 Ed. Law Rep. 915 (S.D. Ala. 2000).

8 U.S.—DeJesus v. Penberthy, 344 F. Supp. 70 (D. Conn. 1972).

9 U.S.—Remer v. Burlington Area School Dist., 286 F.3d 1007, 163 Ed. Law Rep. 625 (7th Cir. 2002).

10 Ind.—Gagne v. Trustees of Indiana University, 692 N.E.2d 489, 124 Ed. Law Rep. 1030 (Ind. Ct. App. 1998).

11 U.S.—Porter ex rel. LeBlanc v. Ascension Parish School Bd., 301 F. Supp. 2d 576, 185 Ed. Law Rep. 585 (M.D. La. 2004), judgment aff'd, 393 F.3d 608, 194 Ed. Law Rep. 497 (5th Cir. 2004).

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16D C.J.S. Constitutional Law § 2225

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

b. Proceedings and Review in Proceedings Involving Students

§ 2225. Academic dismissal of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

A student dismissed from a public school solely because of academic failure is not entitled to a hearing, although a student who is dismissed for academic reasons must be afforded notice of faculty dissatisfaction and the potential dismissal, and the dismissal decision must be careful and deliberate.

A student dismissed from a public school solely because of academic failure is not entitled to a hearing.[1] To satisfy the Fourteenth Amendment's Due Process Clause, a student who is dismissed for academic reasons from a public university must be afforded notice of faculty dissatisfaction and potential dismissal, and the dismissal decision must be careful and deliberate.[2] In the case of academic dismissals from state-run universities, procedural due process does not require any form of hearing before a decision-making body, either before or after the termination decision is made.[3] Accordingly, when a student has been fully informed of the faculty's dissatisfaction with the student's academic progress, and when the decision to dismiss is careful and deliberate, the Fourteenth Amendment's procedural due process requirement has been met.[4]

Substantive due process claim.

A plaintiff asserting a substantive due process claim based on an academic decision must show that the decision was the product of arbitrary state action rather than a conscientious, careful, and deliberate exercise of professional judgment, and a plaintiff may make such a showing by evidence that the challenged decision was based on nonacademic or constitutionally impermissible reasons rather than the product of conscientious and careful deliberation.[5]

Medical residency.

While a medical residency is a hybrid position in which the resident is both a student and an employee, it is primarily a learning position for which the limited due process rights afforded an academic decision about a student apply, and notice of the grounds for the decision and an opportunity to respond are sufficient.[6]

CUMULATIVE SUPPLEMENT

Cases:

Medical student was provided procedural process due for academic dismissal, where student received notice of potential termination from program and school rendered careful and deliberate ultimate decision; even if final decision was premature, school considered student's several requests for leave, reviewed medical documentation that he submitted, and decided to dismiss student should he fail to comply with school's requirement that he take medical licensing examination by particular date, and he did not have to be informed of precise mechanism for dismissal and he was not entitled to "give-and-take" prior to dismissal. U.S.C.A. Const.Amend. 14. Dean v. University at Buffalo School of Medicine and Biomedical Sciences, 804 F.3d 178 (2d Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Board of Curators of University of Missouri v. Horowitz, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978); Hlavacek v. Boyle, 665 F.3d 823, 275 Ed. Law Rep. 580 (7th Cir. 2011).
Dismissal based on academic grounds, not disciplinary decision
U.S.—Fenje v. Feld, 301 F. Supp. 2d 781, 185 Ed. Law Rep. 609 (N.D. Ill. 2003), aff'd, 398 F.3d 620, 195 Ed. Law Rep. 469 (7th Cir. 2005).

2 U.S.—Hlavacek v. Boyle, 665 F.3d 823, 275 Ed. Law Rep. 580 (7th Cir. 2011).

3 U.S.—Fenje v. Feld, 398 F.3d 620, 195 Ed. Law Rep. 469 (7th Cir. 2005).

4 U.S.—Ku v. State of Tennessee, 322 F.3d 431, 174 Ed. Law Rep. 642, 2003 FED App. 0075P (6th Cir. 2003).

5 U.S.—Gossett v. Oklahoma ex rel. Bd. of Regents for Langston University, 245 F.3d 1172, 152 Ed. Law Rep. 505 (10th Cir. 2001).
School did not act arbitrarily or capriciously
Neb.—Doe v. Bd. of Regents of University of Nebraska, 280 Neb. 492, 788 N.W.2d 264, 259 Ed. Law Rep. 875 (2010).

6 U.S.—Fenje v. Feld, 301 F. Supp. 2d 781, 185 Ed. Law Rep. 609 (N.D. Ill. 2003), aff'd, 398 F.3d 620, 195 Ed. Law Rep. 469 (7th Cir. 2005).

16D C.J.S. Constitutional Law § 2226

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

I. Schools and Education

3. Students

b. Proceedings and Review in Proceedings Involving Students

§ 2226. Review or additional proceedings involving students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4212(1), 4212(2), 4215, 4224(11), 4224(12)

There is generally no constitutional right to review or appeal after a student disciplinary hearing which satisfies the essential requirements of due process although administrative appeals which a school affords students must satisfy the requirements of due process of law.

There is no constitutional right to review or appeal after a student disciplinary hearing which satisfies the essential requirements of due process.[1] Thus, due process does not require schools to provide appellate mechanisms for expulsion hearings.[2] However, if a student appeal is afforded, such appeal must be carried out in a fundamentally fair process.[3]

Any lack of due process in an initial disciplinary hearing may[4] or may not[5] be cured by a subsequent hearing. De novo hearings in school disciplinary actions are the preferred form of review and do not affront constitutional standards governing such proceedings. School officials who have ultimate authority to suspend and dismiss students may, without offending due process, be involved in the review of a student's dismissal.[6] The proper standard of review by a federal district court, under the Due

Process Clause, of the expulsion of students is not the substantial evidence test but involves a determination of whether the expulsions can be sustained because they are supported by some evidence.[7]

Waiver.

Procedural due process does not require a school board to grant the request of an expelled student for another hearing and for reconsideration of the expulsion so that mitigating arguments can be presented where the school district has already afforded the student the opportunity to be heard at the expulsion hearing which neither the student, parents, or counsel attended.[8]

Footnotes

1 U.S.—Heyne v. Metropolitan Nashville Public Schools, 655 F.3d 556, 272 Ed. Law Rep. 805 (6th Cir. 2011); Brown v. Western Connecticut State University, 204 F. Supp. 2d 355, 166 Ed. Law Rep. 135 (D. Conn. 2002); Gomes v. University of Maine System, 365 F. Supp. 2d 6 (D. Me. 2005).

2 U.S.—Hammock ex rel. Hammock v. Keys, 93 F. Supp. 2d 1222, 143 Ed. Law Rep. 915 (S.D. Ala. 2000).

3 U.S.—Gomes v. University of Maine System, 365 F. Supp. 2d 6 (D. Me. 2005).

4 U.S.—Greene v. Moore, 373 F. Supp. 1194 (N.D. Tex. 1974).

5 U.S.—Strickland v. Inlow, 519 F.2d 744 (8th Cir. 1975).
Kan.—Smith v. Miller, 213 Kan. 1, 514 P.2d 377 (1973).

6 U.S.—Center for Participant Ed. v. Marshall, 337 F. Supp. 126 (N.D. Fla. 1972).
Ex parte contacts
A presenting officer's improper ex parte contacts with an appeal committee, following the hearing committee's finding that two state university students had sexually assaulted a female student, did not violate due process absent a showing that they had rendered the appeal process irrevocably tainted with fundamental unfairness.
U.S.—Gomes v. University of Maine System, 365 F. Supp. 2d 6 (D. Me. 2005).

7 U.S.—McDonald v. Board of Trustees of University of Illinois, 375 F. Supp. 95 (N.D. Ill. 1974), judgment aff'd, 503 F.2d 105 (7th Cir. 1974).

8 U.S.—Remer v. Burlington Area School Dist., 286 F.3d 1007, 163 Ed. Law Rep. 625 (7th Cir. 2002).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

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Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Due Process
A.L.R. Index, Fair and Impartial Trial
A.L.R. Index, Fifth Amendment
A.L.R. Index, Fourteenth Amendment
West's A.L.R. Digest, Constitutional Law 4115 to 4130

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

a. Social Security and Public Welfare, in General

§ 2227. Property rights in social security and public welfare benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

There may be a property interest in Social Security or public welfare benefits entitling a recipient to due process.

The recipients of Social Security benefits,[1] or public welfare or assistance,[2] have property rights in such benefits or assistance entitling them to due process protection. However, where the prerequisites necessary for determination of eligibility are not fulfilled, the claimant has no property interest in receiving benefits.[3]

Welfare recipients have property rights in their benefits, protected by due process, only in the sense that they may have legitimate claims of entitlement to whatever benefits the legislature creates, and if Congress changes the rules, there is no right to notice and a hearing because there is no property right in the structure of the program.[4] Thus, a welfare recipient is not deprived of due process when the legislature adjusts benefit levels; a legislative determination provides all the process that is due.[5] Similarly, although applicants for social security benefits are entitled to procedural due process, there is no constitutional limitation on the power to make changes in eligibility for certain entitlements.[6]

Various particular statutes, regulations, or matters have been upheld,[7] such as a denial of general welfare assistance to persons who are receiving federal supplemental security income benefits,[8] and an ordinance, which does not set up an irrebuttable presumption of ineligibility, providing that persons who lose their employment after their discharge for cause are not eligible for general assistance for a specified period of time.[9] A statute which creates a rebuttable presumption that a transfer of property for less than the cash market value is made with the intent to qualify for aid has been upheld.[10] The suspension of Social Security benefits during incarceration likewise does not violate due process.[11]

On the other hand, various particular statutes, regulations, or matters relating to social security and public welfare have been found to violate due process,[12] such as a regulation creating an irrebuttable presumption that the income of grandparents is contributed to the needs of an unborn grandchild.[13] A regulation has been deemed to deprive dependents of due process which requires administrative officials to consider the income of a parent as available to dependents living with him or her without an opportunity to show that such income is not actually available to the dependents.[14] A statute which creates a conclusive presumption of fraud and denies welfare benefits to persons who transfer an asset for less than its assessed or fair market value violates due process by failing to give them an opportunity to rebut the conclusive presumption.[15]

Footnotes

1 U.S.—Rooney v. Shalala, 879 F. Supp. 252 (E.D. N.Y. 1995).
Cal.—K.I. v. Wagner, 225 Cal. App. 4th 1412, 170 Cal. Rptr. 3d 916 (4th Dist. 2014), as modified on other grounds, (June 2, 2014) and review denied, (Aug. 20, 2014).

2 U.S.—Henrietta D. v. Giuliani, 119 F. Supp. 2d 181 (E.D. N.Y. 2000), aff'd, 331 F.3d 261 (2d Cir. 2003).
Ill.—Draper and Kramer, Inc. v. King, 2014 IL App (1st) 132073, 388 Ill. Dec. 571, 24 N.E.3d 851 (App. Ct. 1st Dist. 2014).
Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).
Applicants have constitutionally protected interest in government benefits
U.S.—Lewis v. New Mexico Dept. of Health, 94 F. Supp. 2d 1217 (D.N.M. 2000), aff'd, 261 F.3d 970 (10th Cir. 2001).
Cash assistance payments
W. Va.—State ex rel. K.M. v. West Virginia Dept. of Health and Human Resources, 212 W. Va. 783, 575 S.E.2d 393 (2002).
Rental subsidy
Cal.—Anchor Pacifica Management Co. v. Green, 205 Cal. App. 4th 232, 140 Cal. Rptr. 3d 524 (2d Dist. 2012).
Mass.—Rivas v. Chelsea Housing Authority, 464 Mass. 329, 982 N.E.2d 1147 (2013).
Energy assistance program payments
U.S.—Grueschow v. Harris, 492 F. Supp. 419, 30 Fed. R. Serv. 2d 136 (D.S.D. 1980), judgment aff'd, 633 F.2d 1264 (8th Cir. 1980).

3 U.S.—Burton v. Thornburgh, 541 F. Supp. 168 (E.D. Pa. 1982).

4 U.S.—Schulz v. Green County, State of Wis., 645 F.3d 949 (7th Cir. 2011).

5 U.S.—Atkins v. Parker, 472 U.S. 115, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985).
State supplementary payment changes
U.S.—Ireson v. Chater, 899 F. Supp. 446 (N.D. Cal. 1995).

6 U.S.—Torres v. Chater, 125 F.3d 166, 39 Fed. R. Serv. 3d 437 (3d Cir. 1997).

7 U.S.—Doe v. Klein, 599 F.2d 338 (9th Cir. 1979).
Mo.—White v. Division of Family Services, 634 S.W.2d 258 (Mo. Ct. App. E.D. 1982).
Vt.—Bouvier v. Wilson, 139 Vt. 494, 431 A.2d 465 (1981).
Order directing support payments to welfare department

Pa.—Com. v. Baldassari, 279 Pa. Super. 491, 421 A.2d 306 (1980).

Request for attorney's fees

U.S.—Rahman v. Harris, 490 F. Supp. 376 (E.D. Mich. 1980).

8 U.S.—Mangum v. Mitchell, 638 F.2d 203 (10th Cir. 1980).

9 U.S.—Cozart v. Winfield, 687 F.2d 1058 (7th Cir. 1982).

As to unemployment compensation in this regard, see §§ 2237 to 2240.

10 Ill.—Drogolewicz v. Quern, 74 Ill. App. 3d 862, 30 Ill. Dec. 865, 393 N.E.2d 1212, 19 A.L.R.4th 136 (1st Dist. 1979).

11 U.S.—Langella v. Government of U.S., 6 Fed. Appx. 116 (2d Cir. 2001); Butler v. Apfel, 144 F.3d 622 (9th Cir. 1998).

12 U.S.—Like v. Carter, 448 F.2d 798, 15 Fed. R. Serv. 2d 1078 (8th Cir. 1971).

Pa.—Mason v. Com., Dept. of Public Welfare, 12 Pa. Commw. 538, 316 A.2d 925 (1974).

Energy assistance program

U.S.—Naegle v. Department of Social Services of State of S. D., 525 F. Supp. 1030 (D.S.D. 1981).

13 Neb.—Elliott v. Ehrlich, 203 Neb. 790, 280 N.W.2d 637 (1979).

14 Pa.—Molyneaux v. Com., Dept. of Public Welfare, 44 Pa. Commw. 111, 403 A.2d 634 (1979), decision rev'd on other grounds, 498 Pa. 192, 445 A.2d 730 (1982).

15 U.S.—Owens v. Roberts, 377 F. Supp. 45 (M.D. Fla. 1974).

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16D C.J.S. Constitutional Law § 2228

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

a. Social Security and Public Welfare, in General

§ 2228. Old-age, survivors, and disability insurance benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4120 to 4123

Various statutory provisions relating to federal old-age, survivors, and disability insurance benefits have been upheld as not violative of due process.

The interests of a recipient in old-age or disability benefits, amounting to a statutory entitlement, constitutes a property interest within the due process guaranty.[1] However, the denial of Social Security disability benefits does not deprive a claimant of due process where the claimant never qualifies for benefits in the first place.[2]

Various provisions of the Social Security Act relating to old-age, survivors, and disability insurance benefits have been upheld as not violative of due process,[3] such as a provision authorizing an offset in benefits for any period during which the individual is entitled to workers compensation benefits,[4] denying lump-sum Social Security death benefits for failure to make an application within the time prescribed by statute,[5] deducting from Social Security disability benefits for the reimbursement of a state for interim assistance provided to claimants and for overpayments of supplemental security income (SSI) benefits,[6] not allowing

aliens residing outside the United States to receive Social Security disability benefits,[7] and reducing the benefits of individuals continuing to work after age 65 by a certain amount.[8] In addition, a statute, which for the purpose of granting death benefits to "widows," recognizes invalid ceremonial marriages, but does not recognize invalid common-law marriages, is rationally related to the goals of reducing fraudulent claims and establishing an objective criterion susceptible to documentary proof and does not deny due process.[9]

Alcohol or drug addiction.

The retroactive application of a statute which prohibits a person from being considered disabled for Social Security purposes if alcohol or drug addiction is a material contributing factor to the person's disability does not violate due process.[10]

Children's interests.

The interest of a child in a disability annuity constitutes a property interest within the due process guaranty.[11] Various provisions of the Social Security Act relating to children's benefits have been upheld, such as a provision requiring that a child of an old-age beneficiary be adopted before that individual becomes entitled to such benefits but allowing a child born afterwards to receive benefits;[12] or a provision of the Social Security Act whereby a child would be deemed dependent on a stepparent, so as to be entitled to childhood insurance benefits upon the stepparent's death, if the child was receiving at least one-half of support from the stepparent.[13]

Footnotes

1 U.S.—Elliott v. Weinberger, 564 F.2d 1219, 23 Fed. R. Serv. 2d 1025 (9th Cir. 1977), aff'd in part, rev'd in parton other grounds, 442 U.S. 682, 99 S. Ct. 2545, 61 L. Ed. 2d 176, 27 Fed. R. Serv. 2d 941 (1979).
One has due process property right in one's disability benefits
U.S.—Friends of Roeding Park v. City of Fresno, 848 F. Supp. 2d 1152 (E.D. Cal. 2012).
SSI benefits
A claimant's continued receipt of supplemental security income (SSI) benefits is a statutorily created property interest protected by the Fifth Amendment.
U.S.—Oteze Fowlkes v. Adamec, 432 F.3d 90 (2d Cir. 2005).

2 U.S.—Giese v. Barnhart, 55 Fed. Appx. 799 (9th Cir. 2002).

3 U.S.—Lerner v. Richardson, 393 F. Supp. 1387 (E.D. Pa. 1975).

4 U.S.—Worley v. Harris, 666 F.2d 417 (9th Cir. 1982).

5 U.S.—Johnson v. Richardson, 352 F. Supp. 18 (W.D. La. 1972).

6 U.S.—Splude v. Apfel, 165 F.3d 85 (1st Cir. 1999).

7 U.S.—Krishnan ex rel. Deviprasad v. Massanari, 158 F. Supp. 2d 67 (D.D.C. 2001), aff'd, 328 F.3d 685 (D.C. Cir. 2003).

8 U.S.—Williams v. Chater, 98 F.3d 490 (9th Cir. 1996).

9 U.S.—Thomas v. Sullivan, 922 F.2d 132 (2d Cir. 1990).

10 U.S.—Brown v. Apfel, 192 F.3d 492 (5th Cir. 1999); Stengel v. Callahan, 983 F. Supp. 1154, 151 A.L.R. Fed. 771 (N.D. Ill. 1997).

11 U.S.—Kelly v. Railroad Retirement Bd., 625 F.2d 486 (3d Cir. 1980) (construing the Railroad Retirement Act).

12 U.S.—Johnson v. Califano, 656 F.2d 569 (10th Cir. 1981).

13 U.S.—Reutter ex rel. Reutter v. Barnhart, 372 F.3d 946 (8th Cir. 2004).

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16D C.J.S. Constitutional Law § 2229

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

a. Social Security and Public Welfare, in General

§ 2229. Family, maternal, and child welfare assistance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4118

The validity, on due process grounds, of various statutory provisions relating to family, maternal, and child welfare assistance has been adjudicated.

Food stamp benefits are a matter of statutory entitlement for persons qualified to receive them; thus, are appropriately treated as a form of "property" protected by due process.[1] Temporary Assistance to Needy Families (TANF) benefits are likewise "property interests" within the meaning of the Due Process Clause, for purposes of a due process challenge to notices of adverse determinations sent to applicants for welfare benefits.[2] In addition, benefits under the Supplemental Nutrition Assistance Program (SNAP) constitute protected property under the Due Process Clause since such benefits are a matter of statutory entitlement for persons qualified to receive them.[3]

Various particular provisions or matters relating to family, maternal, and child welfare assistance have been upheld as not violative of due process,[4] such as a regulation requiring recipients of Aid to Families with Dependent Children (AFDC) to report

for semiannual interviews,[5] or permitting home visits to food stamp applicants,[6] or a fingerprinting or electronic fingerscanning requirement for recipients of child care assistance in order to track program attendance,[7] and rules establishing the family filing unit as the means to determine AFDC eligibility.[8] Similarly found valid are regulations creating a rebuttable[9] or conclusive presumption of availability of income from legally responsible relatives to recipients of AFDC benefits.[10] An applicant for AFDC benefits has no cognizable federal due process right to require that her assignment of child support payments be separate and individual rather than by operation of law.[11]

Permanent ineligibility.

A statute making individuals convicted of certain drug-related felonies permanently ineligible for benefits under the federal food stamp and temporary assistance for needy families programs does not violate substantive due process.[12]

"Family cap" provisions.

"Family cap" provisions limiting the amount of benefits available have been held not to violate due process.[13]

Footnotes

1 U.S.—Atkins v. Parker, 472 U.S. 115, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985).
Alaska—Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance, 203 P.3d 1155 (Alaska 2009).
Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

2 Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

3 U.S.—Davis v. Proud, 2 F. Supp. 3d 460 (E.D. N.Y. 2014).

4 U.S.—Malis v. Hills, 588 F.2d 545 (6th Cir. 1978).
Pa.—Com., Dept. of Public Welfare v. Molyneaux, 498 Pa. 192, 445 A.2d 730 (1982).
Determination of income
U.S.—Bowen v. Gilliard, 483 U.S. 587, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987).
Repayment of benefits
N.J.—Matter of Jackson's Estate, 79 N.J. 517, 401 A.2d 517 (1979).

5 U.S.—Andrews v. Norton, 385 F. Supp. 672 (D. Conn. 1974), judgment aff'd, 525 F.2d 113 (2d Cir. 1975).

6 U.S.—S.L. v. Whitburn, 67 F.3d 1299 (7th Cir. 1995).

7 U.S.—Williams v. Berry, 977 F. Supp. 2d 621 (S.D. Miss. 2013).

8 Del.—DCSE/Vann v. Rivers, 747 A.2d 128 (Del. Fam. Ct. 1997).

9 Pa.—Wohlgemuth v. Soto, 21 Pa. Commw. 532, 346 A.2d 841 (1975).

10 U.S.—Cancel v. Wyman, 321 F. Supp. 528 (S.D. N.Y. 1970).

11 Conn.—Langan v. Weeks, 37 Conn. App. 105, 655 A.2d 771 (1995).

12 U.S.—Turner v. Glickman, 207 F.3d 419 (7th Cir. 2000).

13 U.S.—C.K. v. Shalala, 883 F. Supp. 991 (D.N.J. 1995), judgment aff'd, 92 F.3d 171 (3d Cir. 1996).
Ind.—N.B. v. Sybinski, 724 N.E.2d 1103 (Ind. Ct. App. 2000).
N.J.—Sojourner A. v. New Jersey Dept. of Human Services, 177 N.J. 318, 828 A.2d 306 (2003).

16D C.J.S. Constitutional Law § 2230

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

a. Social Security and Public Welfare, in General

§ 2230. Medical assistance programs; Medicare and Medicaid

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4125 to 4128

It is necessary to have a liberty or property interest in medical assistance benefits or in Medicare or Medicaid programs to be entitled to due process protection.

In order to be entitled to due process protection in the field of governmentally supported medical assistance, Medicare, and Medicaid, it is necessary that one have a liberty[1] or property interest in the benefits or assistance.[2] When an individual is the recipient of direct Medicaid benefits, such benefits are a protected property interest under the Due Process Clause.[3] Similarly, a Medicare or Medicaid provider may have a property interest in receiving reimbursement payments.[4] However, a Medicare or Medicaid provider has no property right to continued enrollment as a qualified provider.[5]

Various particular statutes, regulations, or matters relating to medical assistance, Medicare, and Medicaid have been upheld as not violative of due process,[6] such as provisions conditioning eligibility of an alien for participation in a federal medical insurance program on continuous residence in the United States for a specified period of time and admission for permanent

residence,[7] and the practice of deeming the income of one spouse available to the other for Medicaid purposes both where the spouses lived together and where one spouse is institutionalized.[8] In addition, a state's requirement that a claimant include his or her veterans' benefits payments as income affecting his or her eligibility for Medicaid and medical assistance benefits does not violate due process.[9] Similarly, prohibiting or penalizing asset transfers does not violate due process.[10]

On the other hand, some standards pertaining to eligibility have been found to violate due process; for instance, state officials' policy and practice of requiring an insurance denial letter to demonstrate eligibility for coverage under a state health care program, which is a federal waiver plan under the Medicaid Act, as an uninsurable person, and their presumption that an applicant who does not indicate such denial is only seeking coverage as an uninsured person, are not rationally related to legitimate state goals and thus violate due process.[11]

CUMULATIVE SUPPLEMENT

Cases:

Department of Health and Human Services (HHS) was required to undertake notice-and-comment rulemaking under the Medicare Act before it included Medicare Part C patients in the fraction used to calculate disproportionate share hospital payments, which had the effect of lowering hospitals' payments for treating low-income Medicare patients, since this action was at least a statement of policy that established or changed a substantive legal standard, as HHS's action let the public know the agency's current adjudicatory approach to a critical question involved in calculating payments for thousands of hospitals nationwide. Social Security Act §§ 1871, 1886, 42 U.S.C.A. §§ 1395hh(a)(2), 1395ww(d)(5)(F)(i)(I), 1395ww(d)(5)(F)(vi)(I). Azar v. Allina Health Services, 139 S. Ct. 1804 (2019).

Permanent injunction was warranted to enjoin enforcement of Centers for Medicare and Medicaid Services' invalid (CMS) payment-deduction policy directing states to deduct Medicare and private-insurance payments from costs when determining each hospitals' disproportionate share hospital (DSH)-payment limit until CMS promulgated policies through procedurally valid rule that complied with Administrative Procedure Act's (APA) notice-and-comment requirements. 5 U.S.C.A. § 553(b)(A); Social Security Act § 1923, 42 U.S.C.A. § 1396r-4(g)(1)(A); 42 C.F.R. §§ 447.299(c)(10), 447.299(c)(11). Tennessee Hospital Association v. Azar, 908 F.3d 1029 (6th Cir. 2018).

Letters from Michigan Department of Community Health and Human Services (DHHS) that retroactively notified non-citizen applicants that they had been denied full Medicaid coverage because DHHS did not have information about their immigration status showing they qualified for full Medicaid, or because applicants were not eligible for full Medicaid, satisfied due process, where letters also offered an opportunity for a hearing, provided specific instructions as to how the individual could appeal the decision, and attached a copy of a hearing request form prepopulated with the precise reason the individual was seeking the appeal. U.S. Const. Amend. 14. Unan v. Lyon, 853 F.3d 279 (6th Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Pharmacist Political Action Committee of Maryland (PHARMPAC) v. Harris, 502 F. Supp. 1235 (D. Md. 1980).
N.Y.—Berd v. New York State Dept. of Health, 96 Misc. 2d 159, 408 N.Y.S.2d 863 (Sup 1978).
Applicant for Medicaid has no due process right to counsel
S.C.—Kearse v. State Health and Human Services Finance Com'n, 318 S.C. 198, 456 S.E.2d 892 (1995).

No liberty interest in choice of physician

U.S.—United Seniors Ass'n, Inc. v. Shalala, 2 F. Supp. 2d 39 (D.D.C. 1998), aff'd, 182 F.3d 965 (D.C. Cir. 1999).

Nursing home had liberty interest in running business free of arbitrary controls

U.S.—Ivy Hall Geriatric and Rehabilitation Center, Inc. v. Shalala, 50 F. Supp. 2d 447 (D. Md. 1999).

2 U.S.—Pharmacist Political Action Committee of Maryland (PHARMPAC) v. Harris, 502 F. Supp. 1235 (D. Md. 1980).

Cal.—Paramount Convalescent Center, Inc. v. Department of Health Care Services, 15 Cal. 3d 489, 125 Cal. Rptr. 265, 542 P.2d 1 (1975).

Medicare patient in nursing home protected by due process

U.S.—Schulz v. Green County, State of Wis., 645 F.3d 949 (7th Cir. 2011).

3 U.S.—Johnson v. Guhl, 91 F. Supp. 2d 754 (D.N.J. 2000).

4 U.S.—Jordan Hosp., Inc. v. Shalala, 276 F.3d 72 (1st Cir. 2002).

N.Y.—Visiting Nurse Service of New York Home Care v. New York State Dept. of Health, 13 A.D.3d 745, 786 N.Y.S.2d 623 (3d Dep't 2004), order aff'd, 5 N.Y.3d 499, 806 N.Y.S.2d 465, 840 N.E.2d 577 (2005).

As to reimbursement in this regard, see § 2231.

5 U.S.—Necula v. Conroy, 13 Fed. Appx. 24 (2d Cir. 2001).

Cal.—Lin v. State, 78 Cal. App. 4th 931, 93 Cal. Rptr. 2d 88 (4th Dist. 2000).

6 U.S.—St. John's Regional Health Center v. Schweiker, 527 F. Supp. 459 (W.D. Mo. 1981).

Ill.—Sweet v. Department of Public Aid, 66 Ill. 2d 195, 5 Ill. Dec. 590, 361 N.E.2d 1118 (1977).

Termination of in-home personal care services

U.S.—Pashby v. Delia, 709 F.3d 307 (4th Cir. 2013).

Telephonic hearing systems upheld

Ind.—Murphy v. Terrell, 938 N.E.2d 823 (Ind. Ct. App. 2010).

7 U.S.—Mathews v. Diaz, 426 U.S. 67, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976).

8 U.S.—Norman v. St. Clair, 610 F.2d 1228 (5th Cir. 1980).

9 U.S.—Terio v. Wing, 79 Fed. Appx. 486 (2d Cir. 2003).

10 U.S.—Gage v. New York State Dept. of Health, 204 F. Supp. 2d 399 (N.D. N.Y. 2002).

Wis.—Buettner v. Wisconsin Dept. of Health & Family Services, 2003 WI App 90, 264 Wis. 2d 700, 663 N.W.2d 282 (Ct. App. 2003).

11 U.S.—Hamby v. Neel, 368 F.3d 549, 2004 FED App. 0139P (6th Cir. 2004).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

a. Social Security and Public Welfare, in General

§ 2231. Medical assistance programs; Medicare and Medicaid—Reimbursement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4125 to 4128

Various statutes, regulations, or matters relating to medical assistance, Medicare, and Medicaid reimbursement have been considered not to violate due process.

A state health and welfare department's regulatory scheme for Medicaid reimbursement does not violate due process on vagueness grounds,[1] where a Medicaid service provider is fully informed of the specific requirements embodied in state regulations and is made aware of the manner in which those requirements will be applied to them, such that it cannot be said that the regulation is a violation of due process.[2]

While a Medicare or Medicaid provider may have a property interest in receiving reimbursement payments,[3] Medicaid providers generally do not have any statutory right to have a particular rate applied in determining reimbursements for their services, precluding a claim that defects in the current rate methodology deprives them of their Fourteenth Amendment procedural due process rights.[4] Similarly, various other statutes, regulations, or matters relating to reimbursement have been considered not to

violate due process, such as provisions prohibiting reimbursement of any rental expense incurred by a provider of nursing care to related organizations;[5] precluding reimbursement for the services of an administrator at more than one nursing home,[6] or for bonus payments to for-profit home health agency's owners;[7] requiring each physician provider under the Medicaid program to designate only one address to which all payment vouchers for services to welfare recipients will be mailed;[8] prohibiting reimbursement of interest expenses for loans between related parties;[9] and prohibiting reimbursement to a provider of supplies while past claims are under investigation by a state agency for fraud, where federal law does not prohibit such payment holds and state law explicitly allows them.[10]

On the other hand, a department of public welfare's imposition of a requirement that a hospice service provider show a decline in a patient's clinical status in order to receive medical assistance payments violates the provider's due process rights, where the requirement is not stated in the applicable regulation, and the department has not provided notice to the provider.[11]

CUMULATIVE SUPPLEMENT

Cases:

Medical services company had significant private interest in payment for services rendered, on claim against Secretary for United States Department of Health and Human Services and Administrator for Centers for Medicare and Medicaid Services alleging that denial of prompt ALJ pre-termination hearing and decision over claimed Medicare overcharges violated its due process rights, since future viability of company, as well as jobs it sustained, hinged on whether it received new reimbursements for new services provided. U.S. Const. Amend. 5; 31 U.S.C.A. § 3711; Social Security Act §§ 1869, 1893, 42 U.S.C.A. §§ 1395ff(b)(3), 1395ff(c)(3)(E), 1395ff(d)(3)(A)-(B), 1395ddd(f)(1)(A); 42 C.F.R. §§ 401.607(c)(3), 405.379(h)(2). A1 Diabetes & Medical Supply v. Azar, 937 F.3d 613 (6th Cir. 2019).

Department of Medicaid (DOM) was required to reimburse hospitals for outpatient services by using formula set forth in State Plan, which calculated rates by dividing costs by charges, excluding services such as laboratory and radiology, which were paid on fee-for-service basis. Crossgates River Oaks Hospital v. Mississippi Division of Medicaid, 240 So. 3d 385 (Miss. 2018).

Procedural due process did not mandate that an amendment to Medicaid Cap Statute terminating counties' ability to submit overburden reimbursement claims that accrued prior to Statute's enactment be extended beyond its effective date in order to protect counties' purported vested rights in any unpaid funds, where counties had information available to pursue claims in decades leading up to amendment's passage, they were aware of State's continued efforts to close door on claims, and they continued to submit claims as amendment's effective date approached. U.S.C.A. Const.Amend. 14; McKinney's Social Services Law § 368–a. County of Chemung v. Shah, 28 N.Y.3d 244, 44 N.Y.S.3d 326, 66 N.E.3d 1044 (2016).

[END OF SUPPLEMENT]

Footnotes

1 Idaho—Capital Care Center v. Idaho Dept. of Health and Welfare, 129 Idaho 773, 932 P.2d 896 (1997).

2 Mo.—Psychiatric Healthcare Corp. of Missouri v. Department of Social Services, 100 S.W.3d 891 (Mo. Ct. App. W.D. 2003).

3 § 2230.

4 U.S.—Burlington United Methodist Family Services, Inc. v. Atkins, 227 F. Supp. 2d 593 (S.D. W. Va. 2002).
No interest in having reimbursement rates calculated in certain manner
Kan.—Villa v. Kansas Health Policy Authority, 296 Kan. 315, 291 P.3d 1056 (2013).

Publication of erroneous data not deprivation of property interest

U.S.—Jordan Hosp., Inc. v. Shalala, 276 F.3d 72 (1st Cir. 2002).

Cost-cutting measure reducing payments not violation of due process

U.S.—In re NYAHSA Litigation, 318 F. Supp. 2d 30 (N.D. N.Y. 2004), aff'd, 444 F.3d 147 (2d Cir. 2006).

5 Md.—Cuppett & Weeks Nursing Home, Inc. v. Department of Health and Mental Hygiene, 49 Md. App. 199, 430 A.2d 875 (1981).

6 U.S.—Carbon Hill Health Care, Inc. v. Beasley, 528 F. Supp. 421 (M.D. Ala. 1981).

7 U.S.—AllCare Home Health, Inc. v. Shalala, 278 F.3d 1087 (10th Cir. 2001).

8 U.S.—Michael Reese Physicians and Surgeons, S.C. v. Quern, 606 F.2d 732 (7th Cir. 1979), on reh'g, 625 F.2d 764 (7th Cir. 1980).

9 U.S.—Regents of University of California v. Shalala, 82 F.3d 291, 108 Ed. Law Rep. 1118 (9th Cir. 1996).

10 U.S.—Personal Care Products, Inc. v. Hawkins, 635 F.3d 155 (5th Cir. 2011).

11 Pa.—Bethany Hospice Services of Western Pennsylvania v. Department of Public Welfare, 88 A.3d 250 (Pa. Commw. Ct. 2013).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

b. Social Security and Public Welfare Proceedings and Review

§ 2232. Social security and public welfare proceedings, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

Due process usually requires that persons or entities involved in proceedings pertaining to social security and public welfare programs be given notice and an opportunity to be heard.

In proceedings involving social security and public welfare programs, due process requires that persons or entities involved be given notice[1] and an opportunity to be heard.[2] While due process requires the opportunity to be heard at a meaningful time and in a meaningful manner in this context, at the same time, due process is flexible and calls for such procedural protections as the particular situation demands.[3]

The failure to grant a hearing to persons or entities affected does not always constitute a violation of due process.[4] A health provider has no right to continued participation in a Medicaid or Medicare program such as would entitle it to a hearing preliminary to withdrawal of the provider agreement[5] or either prior to or after withholding payments pending a fraud

investigation.[6] However, a health care provider has a right to a fair hearing with respect to the denial of claims for services provided to Medicaid patients although not necessarily to a hearing prior to a denial of reimbursement.[7]

Dentists.

Due process does not require dentists to receive an administrative hearing before a state implements a prior authorization requirement regarding the provision of fillings to patients.[8] Similarly, general practice dentists do not have a protected property interest in providing orthodontic services in connection with a state's federally funded medical assistance program, and thus, a state agency's failure to provide dentists with notice and a hearing before stopping coverage of orthodontic services provided by general practice dentists except under limited circumstances does not violate the dentists' procedural or substantive due process rights.[9]

Recoupment of overpayments.

Although a hearing is required by due process on attempts to recover overpayments under a Medicare or Medicaid program,[10] a prerecoupment hearing to recover alleged overpayments need not be afforded a provider, so long as prior notice of recoupment is given and a postaction hearing is available.[11] Due process requires a hearing prior to recoupment of past overpayments from future Social Security benefits payments.[12]

CUMULATIVE SUPPLEMENT

Cases:

Claims by social security disability claimants against the Social Security Administration (SSA), alleging that SSA's termination of benefits on redetermination violated their due process rights and the Social Security Act's implementing regulations, arose under the Social Security Act, and were thus subject to Act's statutory judicial review bar; claimants asserted that benefits were unlawfully terminated, without adequate notice, which was predicated on their potential future entitlement to those benefits, and that claimants' claims had a constitutional basis did not change the fact that claims arose under the Act. U.S. Const. Amend. 5; Social Security Act § 205, 42 U.S.C.A. § 405(h); 20 C.F.R. § 404.988(c)(1). Justiniano v. Social Security Administration, 876 F.3d 14 (1st Cir. 2017).

Provider of dental services to Medicaid patients had right to state fair hearing individually and on behalf of his patients, under Department of Human Services (DHS) rules, with respect to managed care organization's (MCO) denial of his request for reimbursement of claims; provider alleged that MCO denied his claims without following department policy, he exhausted reconsideration process, and he remained dissatisfied with outcome. Iowa Admin. Code r. 441-7.1, 441-74.10(1). Colwell v. Iowa Department of Human Services, 923 N.W.2d 225 (Iowa 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Marshall v. Chater, 75 F.3d 1421 (10th Cir. 1996).
Ill.—Draper and Kramer, Inc. v. King, 2014 IL App (1st) 132073, 388 Ill. Dec. 571, 24 N.E.3d 851 (App. Ct. 1st Dist. 2014).

Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

Wis.—Bidstrup v. Wisconsin Dept. of Health and Family Services, 2001 WI App 171, 247 Wis. 2d 27, 632 N.W.2d 866 (Ct. App. 2001).

2 U.S.—Marshall v. Chater, 75 F.3d 1421 (10th Cir. 1996).

Alaska—Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance, 203 P.3d 1155 (Alaska 2009).

Ill.—Draper and Kramer, Inc. v. King, 2014 IL App (1st) 132073, 388 Ill. Dec. 571, 24 N.E.3d 851 (App. Ct. 1st Dist. 2014).

N.Y.—Lizotte v. Johnson, 4 Misc. 3d 334, 777 N.Y.S.2d 580 (Sup 2004).

Provider given meaningful opportunity to be heard

Ohio—Morning View Care Center-Fulton v. Ohio Dept. of Human Serv., 148 Ohio App. 3d 518, 2002-Ohio-2878, 774 N.E.2d 300 (10th Dist. Franklin County 2002).

3 U.S.—Rosen v. Goetz, 410 F.3d 919, 2005 FED App. 0233P (6th Cir. 2005).

4 U.S.—Case v. Weinberger, 523 F.2d 602 (2d Cir. 1975).

Cal.—Zobriscky v. Los Angeles County, 28 Cal. App. 3d 930, 105 Cal. Rptr. 121 (2d Dist. 1972).

5 U.S.—Kern Enterprises, Inc. v. Aggrey, 450 F. Supp. 137 (N.D. Ohio 1978).

Ind.—Umbrella Family Waiver Services, LLC v. Indiana Family and Social Services Administration, 7 N.E.3d 272 (Ind. Ct. App. 2014).

Nursing facility not entitled to hearing before termination of participation

U.S.—Cathedral Rock of North College Hill, Inc. v. Shalala, 223 F.3d 354, 2000 FED App. 0298P (6th Cir. 2000).

Health care provider had no property interest as provider of "outlier services"

Ohio—Drake Ctr., Inc. v. Ohio Dept. of Human Serv., 125 Ohio App. 3d 678, 709 N.E.2d 532 (10th Dist. Franklin County 1998).

As to medical assistance programs in this regard, generally, see §§ 2230, 2231.

6 U.S.—Peterson v. Weinberger, 508 F.2d 45 (5th Cir. 1975).

Cal.—Bergeron v. Department of Health Services, 71 Cal. App. 4th 17, 83 Cal. Rptr. 2d 481 (5th Dist. 1999).

7 N.J.—Monmouth Medical Center v. State, 80 N.J. 299, 403 A.2d 487 (1979).

A.L.R. Library

Right to notice and hearing prior to termination of Medicaid payments to nursing home under Medicaid provisions of Social Security Act (42 U.S.C.A. secs. 1396 et seq.), 37 A.L.R. Fed. 682.

8 Cal.—Lin v. State, 78 Cal. App. 4th 931, 93 Cal. Rptr. 2d 88 (4th Dist. 2000).

9 U.S.—Latimer v. Robinson, 338 F. Supp. 2d 841 (M.D. Tenn. 2004), aff'd, 2005 FED App. 0530N, 2005 WL 1513103 (6th Cir. 2005).

10 U.S.—Coral Gables Convalescent Home, Inc. v. Richardson, 340 F. Supp. 646 (S.D. Fla. 1972).

N.Y.—Crane v. Axelrod, 86 A.D.2d 923, 448 N.Y.S.2d 554 (3d Dep't 1982).

Right to contest decision

Alaska—Smart v. State, Dept. of Health And Social Services, 237 P.3d 1010 (Alaska 2010).

Notice and opportunity to be heard

The Department of Economic Security's efforts to recoup allegedly overpaid cash assistance benefits must be carried out within the constraints of the Due Process Clause; in this context, due process requires that a benefit recipient be given adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his or her own arguments and evidence.

Ariz.—Henricks v. Arizona Dept. of Economic Sec., 229 Ariz. 47, 270 P.3d 874 (Ct. App. Div. 1 2012).

11 U.S.—5124 Drug Corp. v. Human Resources Admin. of City of New York, 539 F. Supp. 1113 (S.D. N.Y. 1982).

N.Y.—Niagara Falls Memorial Medical Center v. Axelrod, 88 A.D.2d 777, 451 N.Y.S.2d 518 (4th Dep't 1982).

12 U.S.—Thomas v. Weinberger, 384 F. Supp. 540 (S.D. N.Y. 1974).

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16D C.J.S. Constitutional Law § 2233

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

b. Social Security and Public Welfare Proceedings and Review

§ 2233. Notice and hearing conformance with due process in social security and public welfare proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

The notice and hearing required in proceedings involving social security and public welfare must conform to due process requirements.

The notice[1] and hearing in proceedings involving social security and public welfare must conform to due process requirements.[2]

Due process requires that claimants be given notice reasonably calculated to apprise them of the pendency of an action which may permanently affect their rights.[3] If an administrative regulation governing public benefits sets forth the minimum standards for notice requirements, those standards serve as the minimum notice required for due process.[4] A notice that fails to inform a claimant of material factors that could lead to an unfavorable decision violates procedural due process.[5] In order for a claimant to succeed on the merits of a claim that a denial notice violated due process, the claimant must show that he or she relied on the flawed notice and was prejudiced.[6] A notice of denial of a claim is not defective and thus does not violate due process

where the notice adequately informs the claimant of the difference between appealing a denial and reapplying for benefits.[7] Additionally, the consequences of failing to appeal the denial of benefits must be contained in a denial notice.[8] To satisfy due process, the notice accompanying an order of dismissal of a Social Security benefits application must be reasonably calculated to afford parties their right to present objections, and moreover, the notice must not be so misleading that it introduces a high risk of error into the disability decision-making process.[9]

When beneficiaries of a public assistance program are unknown at the time of its inception, employment of an indirect and even a probably futile means of notification is all the situation permits and creates no due process bar to a final decree foreclosing their rights.[10] Requirements for the notice of a mass change in social security, supplemental security income (SSI), or other federal benefits, sufficient to meet due process, are that individual notices be sent to all affected recipients and that the notice inform the recipients of the change.[11]

Although a hearing is informal in nature, due process requires that any hearing afforded a claimant be full and fair.[12] A few improper comments by an administrative law judge does not constitute a denial of due process; rather, the test is whether an alleged bias has prevented a claimant from receiving a full and fair hearing on the merits of the claim.[13] A decision-maker's conclusion as to a recipient's eligibility for state benefits must rest solely on the legal rules and evidence adduced at the hearing in order to comply with due process requirements.[14]

Right to confront and cross-examine witnesses.

Due process requires that the claimant be given an opportunity to confront and cross-examine adverse witnesses,[15] although the right of due process does not always require cross-examination of medical report authors,[16] and interrogatories may provide a meaningful opportunity to confront adverse evidence.[17] Moreover, a claimant may waive his or her right to confront witnesses, thus defeating the claim that his or her due process rights have been violated.[18]

Subpoenas.

Due process may also require that a claimant be provided with an opportunity to subpoena individuals[19] although the decision to issue a subpoena is within sound discretion of the administrative law judge.[20] Thus, constitutional due process does not require a per se rule that disability claimants are in all cases entitled to a subpoena.[21]

Representation by counsel.

A Medicaid applicant is not deprived of a "liberty interest" as a result of the denial of an application for Medicaid benefits and thus has no right to counsel under the Due Process Clause.[22] In addition, while social service claimants are entitled to due process in the administrative process, this due process right does not encompass the right to appointed counsel.[23] However, although due process does not require an assignment of counsel for needy applicants at social services hearings, it does require that the applicant be made aware that community legal services are available.[24]

Footnotes

1 U.S.—Grueschow v. Harris, 492 F. Supp. 419, 30 Fed. R. Serv. 2d 136 (D.S.D. 1980), judgment aff'd, 633 F.2d 1264 (8th Cir. 1980).

Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

N.Y.—Barnes v. Reed, 84 Misc. 2d 124, 374 N.Y.S.2d 898 (Sup 1975).

Notice to applicant's last known address sufficient procedural due process

Pa.—Clark v. Com., Dept. of Public Welfare, 58 Pa. Commw. 142, 427 A.2d 712 (1981).

Oral notice did not offend due process

Mo.—White v. Division of Family Services, 634 S.W.2d 258 (Mo. Ct. App. E.D. 1982).

Notice mailed to claimant

Substantial evidence supported a finding, in a Social Security disability benefits case, that the notice advising a claimant of the decision to deny his application for benefits was mailed to the claimant, despite his testimony that he never received it, such that the claimant was not denied due process.

U.S.—Costello v. Barnhart, 125 Fed. Appx. 920 (10th Cir. 2005).

2 U.S.—Mays v. Colvin, 739 F.3d 569 (10th Cir. 2014).

Pa.—Brown v. Com., Dept. of Public Welfare, 43 Pa. Commw. 23, 401 A.2d 616 (1979).

3 U.S.—Rooney v. Shalala, 879 F. Supp. 252 (E.D. N.Y. 1995).

4 Colo.—Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

5 U.S.—Francisco v. Barnhart, 366 F. Supp. 2d 461 (S.D. Tex. 2004).

Name and resume of vocational expert provided prior to hearing

U.S.—Subia v. Commissioner of Social Sec., 264 F.3d 899 (9th Cir. 2001).

6 U.S.—Ardito v. Barnhart, 278 F. Supp. 2d 247 (D. Conn. 2002); Brooks v. Apfel, 71 F. Supp. 2d 858 (N.D. Ill. 1999).

7 U.S.—Martin v. Shalala, 927 F. Supp. 536 (D.N.H. 1995).

8 U.S.—Yeazel v. Apfel, 148 F.3d 910 (8th Cir. 1998).

Res judicata consequences of failing to file appeal

U.S.—Harris v. Callahan, 11 F. Supp. 2d 880 (E.D. Tex. 1998).

9 U.S.—Rolen v. Barnhart, 273 F.3d 1189 (9th Cir. 2001).

10 N.Y.—Diaz v. Dowling, 217 A.D.2d 625, 629 N.Y.S.2d 466 (2d Dep't 1995).

11 U.S.—Ireson v. Chater, 899 F. Supp. 446 (N.D. Cal. 1995).

12 U.S.—Ferriell v. Commissioner of Social Sec., 614 F.3d 611 (6th Cir. 2010); Hurd v. Astrue, 621 F.3d 734 (8th Cir. 2010).

Duty to develop record fully and fairly

U.S.—Ventura v. Shalala, 55 F.3d 900 (3d Cir. 1995).

13 U.S.—Williams v. Chater, 915 F. Supp. 954 (N.D. Ind. 1996).

No indication of bias

Applicants were not denied due process at a medical indigency assistance hearing before the county board of commissioners, even if the payment of indigency benefits came from the same fund which supported the board, in the absence of an indication in the record of actual bias on the part of the board.

Idaho—Shobe v. Ada County, Bd. of Com'rs, 130 Idaho 580, 944 P.2d 715 (1997).

14 Ohio—Mocznianski v. Ohio Dept. of Job & Family Servs., 195 Ohio App. 3d 422, 2011-Ohio-4685, 960 N.E.2d 522 (6th Dist. Lucas County 2011).

15 U.S.—Gullo v. Califano, 609 F.2d 649 (2d Cir. 1979).

Ill.—Jamison v. Weaver, 30 Ill. App. 3d 389, 332 N.E.2d 563 (1st Dist. 1975).

Failure to allow cross-examination constitutes denial of due process

U.S.—Goree v. Callahan, 964 F. Supp. 1533 (N.D. Okla. 1997).

Claimant unable to cross-examine author of posthearing report

An administrative law judge's (ALJ) reliance on a posthearing report violates due process when a disability benefits claimant is unable to cross-examine the author of that report.

U.S.—Gauthney v. Shalala, 890 F. Supp. 401 (E.D. Pa. 1995).

16 U.S.—Chandler v. Commissioner of Social Sec., 124 Fed. Appx. 355, 2005 FED App. 0142N (6th Cir. 2005); Bush v. Apfel, 34 F. Supp. 2d 1290 (N.D. Okla. 1999).

17 U.S.—Flatford v. Chater, 93 F.3d 1296, 1996 FED App. 0281P (6th Cir. 1996).

Opportunity to review report after interrogatories

U.S.—Williams v. Barnhart, 83 Soc. Sec. Rep. Serv. 340, 2002 WL 31236114 (N.D. Cal. 2002).

18 U.S.—Fliegler v. Commissioner of Social Security, 117 Fed. Appx. 213 (3d Cir. 2004).

19 U.S.—Chamberlain v. Shalala, 47 F.3d 1489 (8th Cir. 1995); Kelly v. Chater, 952 F. Supp. 419 (W.D. Tex. 1996).

20 U.S.—Yancey v. Apfel, 145 F.3d 106 (2d Cir. 1998).

21 U.S.—Feliciano v. Chater, 901 F. Supp. 50 (D.P.R. 1995).

Denial of subpoena not due process violation

U.S.—Bush v. Apfel, 34 F. Supp. 2d 1290 (N.D. Okla. 1999).

22 S.C.—Kearse v. State Health and Human Services Finance Com'n, 318 S.C. 198, 456 S.E.2d 892 (1995).

23 Cal.—K.I. v. Wagner, 225 Cal. App. 4th 1412, 170 Cal. Rptr. 3d 916 (4th Dist. 2014), as modified on other grounds, (June 2, 2014) and review denied, (Aug. 20, 2014).

24 N.Y.—Capek v. Blum, 76 A.D.2d 924, 429 N.Y.S.2d 265 (2d Dep't 1980).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

b. Social Security and Public Welfare Proceedings and Review

§ 2234. Review of determination in social security and public welfare proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

A social security or public welfare benefit claimant has a due process right to meaningful review of an adverse determination.

A claimant who applies for Social Security benefits has a due process right to meaningful review of an adverse determination.[1] In addition, Medicare or Medicaid providers have a due process right to review.[2] However, the preclusion of a review of Medicare benefit claims under a specified amount does not deny due process,[3] and due process is not violated when payment of filing fees is made a prerequisite to review.[4]

The procedure on review must conform to due process requirements.[5] Delay in reviewing denials of Social Security payments must not be so unreasonable as to deny due process[6] since delay in administrative review of errors made in initial eligibility determinations is a significant factor in assessing the sufficiency of due process.[7]

CUMULATIVE SUPPLEMENT

Cases:

Chiropractor was not denied procedural due process by delayed ALJ review of government recoupment after audit finding Medicare Part B overpayment, since escalation procedure specifically had been made part of process by statute to ensure timely post-deprivation review in court of law. U.S. Const. Amend. 5; Social Security Act §§ 205, 1869, 42 U.S.C.A. §§ 405(g), 1395ff(d)(3)(A); 42 C.F.R. §§ 405.1020, 405.1036(f)(1). Accident, Injury and Rehabilitation, PC v. Azar, 943 F.3d 195 (4th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Gosnell v. Harris, 521 F. Supp. 956 (S.D. Ohio 1981), judgment aff'd, 703 F.2d 216 (6th Cir. 1983).

2 U.S.—Furlong v. Shalala, 238 F.3d 227 (2d Cir. 2001).

Failure to use appeals procedure

A healthcare provider was not deprived of due process in connection with the state health department's finding of the facility's noncompliance with Medicaid certification requirements where the department provided an appeals procedure to challenge its findings and the provider had failed to use it.

U.S.—Legacy Healthcare, Inc. v. Feldman, 11 Fed. Appx. 589 (7th Cir. 2001).

3 U.S.—Rubin v. Weinberger, 524 F.2d 497 (7th Cir. 1975).

4 Or.—Ortwein v. Schwab, 262 Or. 375, 498 P.2d 757 (1972), judgment aff'd, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973).

5 N.Y.—Barnes v. Reed, 84 Misc. 2d 124, 374 N.Y.S.2d 898 (Sup 1975).

Notice of adverse determination in welfare case inadequate

Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

Use of advocates during periods of low appeals

Iowa—Clark v. Iowa Dept. of Job Service, 317 N.W.2d 517 (Iowa Ct. App. 1982).

6 U.S.—Wright v. Califano, 587 F.2d 345, 26 Fed. R. Serv. 2d 1166 (7th Cir. 1978).

Delay held not denial of due process

An appeals council's lengthy delay, in a supplemental security income (SSI) case, in disposing of the claimant's request for review, did not constitute a denial of due process, particularly in light of the fact that the claimant was not prejudiced inasmuch as her claim was denied.

U.S.—Schomer v. Commissioner of Social Sec., 80 Fed. Appx. 242 (3d Cir. 2003).

7 U.S.—Wright v. Califano, 587 F.2d 345, 26 Fed. R. Serv. 2d 1166 (7th Cir. 1978).

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Mandamus, under 28 U.S.C.A. sec. 1361, to compel prompt hearing in appeal from denial of Social Security disability benefits, 47 A.L.R. Fed. 929.

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J. Social Security and Public Welfare; Unemployment Compensation

1. Social Security and Public Welfare

b. Social Security and Public Welfare Proceedings and Review

§ 2235. Reduction, suspension, or termination of social security and public welfare benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

Due process requires that a recipient be given adequate notice and an opportunity for an evidentiary hearing prior to the reduction, suspension, or termination of Social Security benefits or public assistance payments.

Due process requires that a recipient be given adequate notice and an opportunity for an evidentiary hearing prior to the reduction, suspension, or termination of Social Security benefits or public assistance payments.[1] On the other hand, an evidentiary hearing is not required prior to the termination of some benefits under the Social Security Act, absent a property interest or statutory entitlement to such benefits.[2] The mere absence of an evidentiary hearing prior to the termination of benefits does not deny due process where there are provisions for administrative review and for hearings after the termination of the benefits,[3] and a procedure for a preliminary prereduction determination, to be followed by a full and prompt postreduction hearing if requested, conforms to due process requirements.[4]

Under the Due Process Clause, there is no requirement to provide a predeprivation review procedure for an appeal of a determination underlying the reduction or termination of services to a Medicare beneficiary.[5] Procedures of a state for disenrolling beneficiaries from a Medicaid program in connection with its elimination of three categories of coverage, requiring beneficiaries to establish a "valid factual dispute" before being entitled to a hearing, does not violate due process.[6] However, it has been found that the termination of public assistance benefits during the pendency of an administrative hearing offends the constitutional guarantee to due process.[7]

Footnotes

1 U.S.—Perry v. Chen, 985 F. Supp. 1197 (D. Ariz. 1996); Salazar v. District of Columbia, 954 F. Supp. 278 (D.D.C. 1996).
Ariz.—Camerena v. Department of Public Welfare, 106 Ariz. 30, 470 P.2d 111 (1970).
Cal.—McCullough v. Terzian, 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 47 A.L.R.3d 266 (1970).
Ind.—Gomolisky v. Davis, 716 N.E.2d 970 (Ind. Ct. App. 1999).
Ky.—Pack v. Dietz, 455 S.W.2d 575 (Ky. 1970).
Termination of medical assistance benefits
U.S.—Wooten v. New York City Human Resources Admin., 421 F. Supp. 2d 737 (S.D. N.Y. 2006).
Failure to provide notice constitutes violation of due process
The practice of a city agency charged with furnishing federal and state benefits to individuals suffering from AIDS of terminating cases of eligible recipients without notice violated the due process guarantees of the Fourteenth Amendment.
U.S.—Henrietta D. v. Giuliani, 119 F. Supp. 2d 181 (E.D. N.Y. 2000), aff'd, 331 F.3d 261 (2d Cir. 2003).

2 U.S.—Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).
W. Va.—State ex rel. K.M. v. West Virginia Dept. of Health and Human Resources, 212 W. Va. 783, 575 S.E.2d 393 (2002).

3 U.S.—Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).

4 U.S.—Frost v. Weinberger, 515 F.2d 57, 20 Fed. R. Serv. 2d 117 (2d Cir. 1975).

5 U.S.—Lutwin v. Thompson, 361 F.3d 146 (2d Cir. 2004).

6 U.S.—Rosen v. Goetz, 410 F.3d 919, 2005 FED App. 0233P (6th Cir. 2005).

7 N.Y.—Mitchell v. Bane, 218 A.D.2d 537, 630 N.Y.S.2d 495 (1st Dep't 1995).

16D C.J.S. Constitutional Law § 2236

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1. Social Security and Public Welfare

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§ 2236. Reduction, suspension, or termination of social security and public welfare benefits—Requisites and sufficiency

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4115 to 4130

The notice and hearing required in cases of the reduction, suspension, or termination of Social Security or public welfare benefits must be sufficient to satisfy due process.

The notice in cases of the reduction, suspension, or termination of Social Security or public welfare benefits must be sufficient to satisfy due process.[1] Under due process principles, in an action to suspend welfare benefits to which an individual has a statutory entitlement, notice to that individual of the action must be reasonably calculated to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections, and it must also reasonably convey the required information.[2] More specifically, a recipient must be provided with timely and adequate notice detailing the reasons for a proposed termination.[3] Notices of termination of Medicaid benefits are required by the Due Process Clause to include specific financial information where applicable in order that errors may be corrected.[4] A notice which specifies the wrong charge as the

basis of a reduction does not comply with due process.[5] The ability to proactively inquire as to the reasons for a termination of government welfare benefits is an inadequate remedy for a notice otherwise deficient pursuant to procedural due process.[6]

A notice is not required to be in writing,[7] nor is it required that notice to recipients known to be literate in a foreign language but not in English be given in that or in any other language.[8] Any due process requirement that a welfare recipient be sent copies of documents relied on to support a termination in advance of a fair hearing is satisfied by a regulation which allows the examination of such documents at a reasonable time before the fair hearing.[9]

On the proposed termination of public assistance payments, it is not enough to permit the recipient to present his or her position to the decision-maker in writing or secondhand through a caseworker.[10] Instead, due process requires the opportunity to be heard at a meaningful time and in a meaningful manner before the termination of public assistance payments.[11] The State must provide a recipient with an effective opportunity to present arguments and evidence orally[12] as well as to confront and cross-examine witnesses relied on by the agency.[13] Moreover, due process requires that a claimant be able to produce important and relevant witnesses and evidence on his or her behalf[14] although due process does not require a particular order of proof or mode of offering evidence and informal procedures will suffice.[15] Note, a fair hearing on the discontinuance of public assistance does not conform with due process requirements where the hearing is brief and there is a complete failure to develop the testimony presented by a recipient.[16]

Assignment of counsel.

Due process does not require assignment of counsel for a public assistance recipient at a hearing to discontinue aid.[17]

Footnotes

1 U.S.—Vargas v. Trainor, 508 F.2d 485 (7th Cir. 1974).
N.Y.—Allen v. Blum, 85 A.D.2d 228, 448 N.Y.S.2d 163 (1st Dep't 1982), order aff'd, 58 N.Y.2d 954, 460 N.Y.S.2d 520, 447 N.E.2d 68 (1983).
Pa.—Robinson v. Com. Dept. of Public Welfare, 29 Pa. Commw. 402, 371 A.2d 255 (1977).
Due process satisfied by registered mail to multiple addresses
Ill.—Hwang v. Illinois Dept. of Public Aid, 333 Ill. App. 3d 698, 267 Ill. Dec. 429, 776 N.E.2d 801 (1st Dist. 2002).
Notice prior to termination of benefits pursuant to regulation sufficient
Neb.—Johnsen v. State, 269 Neb. 790, 697 N.W.2d 237 (2005).

2 Ill.—Draper and Kramer, Inc. v. King, 2014 IL App (1st) 132073, 388 Ill. Dec. 571, 24 N.E.3d 851 (App. Ct. 1st Dist. 2014).

3 U.S.—Ladd v. Thomas, 962 F. Supp. 284 (D. Conn. 1997).
Alaska—Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance, 203 P.3d 1155 (Alaska 2009).
N.C.—Cloninger v. North Carolina Dept. of Health and Human Services, 203 N.C. App. 345, 691 S.E.2d 127 (2010).

4 U.S.—Rodriguez By and Through Corella v. Chen, 985 F. Supp. 1189 (D. Ariz. 1996).

5 N.Y.—Middleton v. D'Elia, 87 A.D.2d 821, 448 N.Y.S.2d 760 (2d Dep't 1982).
"Rent duplication" changed to "Rent advancement"
N.Y.—Cruz v. Lavine, 45 A.D.2d 720, 356 N.Y.S.2d 334 (2d Dep't 1974).
Receipt of tuition assistance grant changed to receipt of educational loan
U.S.—Jamroz v. Blum, 509 F. Supp. 953 (N.D. N.Y. 1981).

6 Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

7 U.S.—Williams v. Weinberger, 360 F. Supp. 1349 (N.D. Ga. 1973).

8 Cal.—Guerrero v. Carleson, 9 Cal. 3d 808, 109 Cal. Rptr. 201, 512 P.2d 833 (1973).

9 N.Y.—Mas v. Lavine, 76 Misc. 2d 344, 351 N.Y.S.2d 777 (Sup 1973), judgment aff'd, 43 A.D.2d 831, 351 N.Y.S.2d 941 (2d Dep't 1974).

10 U.S.—Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).

11 U.S.—Rosen v. Goetz, 410 F.3d 919, 2005 FED App. 0233P (6th Cir. 2005).

Telephone hearing for incarcerated person sufficient

U.S.—Butler v. Apfel, 144 F.3d 622 (9th Cir. 1998).

Failure to attend rescheduled hearing

A former recipient of rehabilitation services from the state department of rehabilitative services was afforded due process in connection with the termination of services, where the department had scheduled a hearing at the former recipient's request and then rescheduled the hearing in response to the former recipient's request for a continuance, and the former recipient failed to attend the hearing and was unable to show good cause for the failure to appear.

U.S.—Gent v. Gordon, 21 A.D.D. 535 (W.D. Va. 1995), aff'd, 61 F.3d 899 (4th Cir. 1995).

12 U.S.—Ladd v. Thomas, 962 F. Supp. 284 (D. Conn. 1997).

Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

N.C.—Cloninger v. North Carolina Dept. of Health and Human Services, 203 N.C. App. 345, 691 S.E.2d 127 (2010).

N.D.—Barnett v. North Dakota Dept. of Human Services, 551 N.W.2d 557 (N.D. 1996).

13 U.S.—Wheeler v. Montgomery, 397 U.S. 280, 90 S. Ct. 1026, 25 L. Ed. 2d 307 (1970); Ladd v. Thomas, 962 F. Supp. 284 (D. Conn. 1997).

Ind.—Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012).

N.C.—Cloninger v. North Carolina Dept. of Health and Human Services, 203 N.C. App. 345, 691 S.E.2d 127 (2010).

Trial-type hearing required

D.C.—Powell v. District of Columbia Housing Authority, 818 A.2d 188 (D.C. 2003).

14 N.Y.—Murphy v. Lavine, 77 Misc. 2d 772, 354 N.Y.S.2d 754 (Sup 1973).

15 U.S.—Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).

16 N.Y.—Feliz v. Wing, 285 A.D.2d 426, 729 N.Y.S.2d 13 (1st Dep't 2001).

17 N.Y.—Brown v. Lavine, 37 N.Y.2d 317, 372 N.Y.S.2d 75, 333 N.E.2d 374 (1975).

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16D C.J.S. Constitutional Law § 2237

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

2. Unemployment Compensation

§ 2237. Unemployment compensation, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4129

While an unemployment compensation benefit is a constitutionally protected property interest which may be affected only by observing the essentials of due process, unemployment compensation provisions have generally been upheld as not in violation of due process of law.

An unemployment compensation benefit is a constitutionally protected property interest which may be affected only by observing the essentials of due process.[1] Unemployment compensation provisions have generally been upheld as not in violation of constitutional guaranties of due process of law.[2] The test for substantive due process in areas of social and economic legislation, including unemployment compensation laws, is whether a challenged law has a rational relation to a valid state objective.[3]

The fact that employers and employees are classified and certain classes subjected to the act and others exempted therefrom is not a violation of due process of law.[4] Thus, ineligibility for unemployment compensation due to status as a businessperson does not amount to a denial of due process,[5] nor does allowing to be included within wages subject to tax the wages of corporate stockholders who are bona fide employees and yet who, as unemployed businesspersons, would be ineligible for unemployment

compensation.[6] Moreover, due process is not denied by the application of a statute offsetting benefits by the amount of a military pension,[7] or reducing benefits to persons who receive retirement or Social Security income.[8]

The disqualification of full-time college students for unemployment benefits does not violate due process.[9] A presumption of unavailability of students for work so as to preclude them from receiving unemployment compensation has been found not violative of due process where it is a rebuttable and not a conclusive presumption[10] although such a presumption has been upheld even though it is irrebuttable.[11]

On the other hand, various particular statutes, regulations, and other matters relating to unemployment compensation have been considered in violation of due process of law,[12] such as statutes imposing indefinite disqualification from receiving benefits on those individuals who voluntarily quit work to perform marital or domestic duty while imposing only a specified waiting period on others who voluntarily quit work.[13]

Footnotes

1 U.S.—Ross v. Horn, 598 F.2d 1312 (3d Cir. 1979).
Cal.—American Federation of Labor v. Employment Dev. Dept., 88 Cal. App. 3d 811, 152 Cal. Rptr. 193 (2d Dist. 1979).
Minn.—Godbout v. Department of Employment and Economic Development, 827 N.W.2d 799 (Minn. Ct. App. 2013).
Unemployment insurance benefits are property right
Cal.—Kelley v. California Unemployment Insurance Appeals Board, 223 Cal. App. 4th 1067, 167 Cal. Rptr. 3d 802 (2d Dist. 2014).

2 U.S.—Florida AFL-CIO v. State of Fla. Dept. of Labor and Employment Sec., 676 F.2d 513 (11th Cir. 1982).
Ga.—Caldwell v. Hospital Authority of Charlton County, 248 Ga. 887, 287 S.E.2d 15 (1982).
N.Y.—Drassenower v. Levine, 48 A.D.2d 957, 369 N.Y.S.2d 227 (3d Dep't 1975).
Waiting period precedent to eligibility
U.S.—Nevills v. State of Ill., 388 F. Supp. 622 (E.D. Ill. 1974).

3 Pa.—McFadden v. Unemployment Compensation Bd. of Review, 806 A.2d 955 (Pa. Commw. Ct. 2002).

4 La.—Robinson v. Administrator, Dept. of Employment Sec., 356 So. 2d 477 (La. Ct. App. 1st Cir. 1977).
Agricultural labor
U.S.—Doe v. Hodgson, 344 F. Supp. 964 (S.D. N.Y. 1972), judgment aff'd, 478 F.2d 537 (2d Cir. 1973).
Charitable organizations
D.C.—Von Stauffenberg v. District Unemployment Compensation Bd., 269 A.2d 110 (D.C. 1970), judgment aff'd, 459 F.2d 1128 (D.C. Cir. 1972).

5 Pa.—Sollosi v. Com., Unemployment Compensation Bd. of Review, 68 Pa. Commw. 573, 449 A.2d 875 (1982).

6 Pa.—Steppler v. Com., Unemployment Compensation Bd. of Review, 48 Pa. Commw. 54, 408 A.2d 1185 (1979).

7 N.J.—Moyer v. Board of Review, 183 N.J. Super. 543, 444 A.2d 1115 (App. Div. 1982).

8 U.S.—McKay v. Horn, 529 F. Supp. 847 (D.N.J. 1981).
As to social security and public welfare in this regard, generally, see §§ 2227 to 2236.

9 N.D.—Lee v. Job Service North Dakota, 440 N.W.2d 518, 53 Ed. Law Rep. 1283 (N.D. 1989).

10 Pa.—Frenkel v. Com., Unemployment Compensation Bd. of Review, 59 Pa. Commw. 24, 428 A.2d 776 (1981).

11 Minn.—Shreve v. Department of Economic Sec., 283 N.W.2d 506 (Minn. 1979).

12 Wash.—State v. Lawton, 25 Wash. 2d 750, 172 P.2d 465 (1946).
Denial of benefits to day student employee
Idaho—Kerr v. Department of Employment, 97 Idaho 385, 545 P.2d 473 (1976).

13 W. Va.—Thomas v. Rutledge, 167 W. Va. 487, 280 S.E.2d 123 (1981).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

2. Unemployment Compensation

§ 2238. Unemployment compensation proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4129

Proceedings for the carrying out and enforcement of unemployment compensation acts must be conducted in conformity with the requirements of due process of law.

Proceedings for the carrying out and enforcement of unemployment compensation acts must be conducted in conformity with the requirements of due process of law.[1] Notice[2] and an opportunity to be heard must be given at some stage of the proceedings to persons whose rights are affected thereby,[3] although a hearing is not required at any particular stage of the proceeding, as long as a hearing is accorded before a final order becomes effective.[4]

The employer is entitled to a hearing on the issue of a claimant's eligibility for unemployment benefits.[5] In addition, where an unemployment benefits application involves allegations that the employer has deliberately misinformed the employee regarding eligibility to file for benefits in violation of its statutory duties, basic notions of due process require the agency to afford the employer an opportunity to be heard, as a compensation award to the employee might increase the employer's rate of contribution to the unemployment insurance fund.[6]

Various other matters with respect to proceedings for unemployment compensation have been upheld as not violative of due process,[7] such as several hearing officials separately hearing part of the evidence,[8] and the failure to provide persons who speak only a foreign language with appropriate interviewers or notices and other communications in that language.[9]

Termination.

While there is some authority to the contrary,[10] due process does not require a full evidentiary hearing prior to discontinuance of unemployment benefits, provided there is a full evidentiary hearing within a reasonable time after termination.[11]

Overpayment.

Where the claimant receives benefits to which he or she is not entitled, due process requires that his or her liability to repay must be determined after the claimant has been afforded an opportunity of a hearing, after proper notice, upon all the issues set out in the applicable statute.[12] Thus, an unemployment compensation claimant is denied due process of law where he or she does not receive notice and an opportunity to be heard prior to the Department of Economic Security commencing its effort to recoup overpaid unemployment benefits by intercepting the claimant's current benefits and applying them toward an earlier overpayment.[13]

CUMULATIVE SUPPLEMENT

Cases:

Even if claimant had sufficient property interest in unemployment compensation benefits to entitle her to due process under state constitution, procedural due process was not violated by allowing Commissioner of Department of Employment Security, on her own initiative, to reopen claimant's fraud case after appeal tribunal determined that claimant was not required to repay benefits; risk of erroneous deprivation of claimant's private interest in case was minimal given extensive appeal process afforded to her, Commissioner served solely as second level of appeal and was not given unfettered authority to reopen cases, and government had interest in ensuring accurate proceeding. N.H. Const. pt. 1, art. 15; N.H. Rev. Stat. Ann. §§ 282-A:53, 282-A:60, 282-A:67, 282-A:164, 282-A:165. Appeal of Mullen, 149 A.3d 1270 (N.H. 2016).

Reimbursing employer had no legitimate claim of entitlement to amount of unemployment-compensation benefits that were paid by unemployment-compensation fund to claimant in period between claims adjudicator's determination awarding benefits and ALJ's reversal, and thus employer had no property interest that was protected by due process clause; employer did not suggest that it had common-law or contractual entitlement to benefits that it paid to fund, Vermont Administrative Procedures Act (VAPA) did not provide for entitlement to recover benefits, and unemployment-compensation statute expressly provided that reimbursing employers had no entitlement to benefits paid but denied on appeal. U.S. Const. Amend. 14; 3 Vt. Stat. Ann. § 809; 21 Vt. Stat. Ann. § 1321(f). Chittenden County Sheriff's Department v. Department of Labor, 2020 VT 4, 228 A.3d 85 (Vt. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Ill.—Yadro v. Bowling, 91 Ill. App. 3d 889, 47 Ill. Dec. 128, 414 N.E.2d 1244 (1st Dist. 1980).
N.Y.—Pollard v. Catherwood, 25 A.D.2d 915, 270 N.Y.S.2d 105 (3d Dep't 1966).

Pa.—Womeldorf v. Com., Unemployment Compensation Bd. of Review, 59 Pa. Commw. 627, 430 A.2d 722 (1981).

Claimants entitled to due process before being denied benefits

Mont.—Bean v. Montana Bd. of Labor Appeals, 1998 MT 222, 290 Mont. 496, 965 P.2d 256 (1998).

2 Fla.—Montalbano v. Unemployment Appeals Com'n, 873 So. 2d 417 (Fla. 4th DCA 2004).

La.—Barber v. Administrator, Office of Employment Sec., 664 So. 2d 844 (La. Ct. App. 3d Cir. 1995).

Minn.—Godbout v. Department of Employment and Economic Development, 827 N.W.2d 799 (Minn. Ct. App. 2013).

3 Ind.—Hamilton Heights School Corp. v. Review Bd. of Indiana Dept. of Workforce Development, 989 N.E.2d 1275 (Ind. Ct. App. 2013).

Mo.—Scrivener Oil Co., Inc. v. Crider, 304 S.W.3d 261 (Mo. Ct. App. S.D. 2010).

Ohio—Hertelendy v. Great Lakes Architectural Serv. Sys., Inc., 2012-Ohio-4157, 976 N.E.2d 950 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012).

4 N.J.—Charles Headwear, Inc. v. Board of Review, 11 N.J. Super. 321, 78 A.2d 306 (App. Div. 1951).

Increase in employer's contribution rate

Increasing an employer's contribution rate for failure to file a timely quarterly report and payment without affording the employer a prior hearing did not deny the employer due process, where the employer subsequently had an adequate opportunity to present its case and had not paid any of the increased rate.

Utah—Vali Convalescent & Care Inst. v. Industrial Com'n of Utah, 649 P.2d 33 (Utah 1982).

5 Fla.—Port Carriers, Inc. v. Simmons, 412 So. 2d 910 (Fla. 1st DCA 1982).

N.Y.—In re Grace, 69 A.D.3d 1156, 893 N.Y.S.2d 660 (3d Dep't 2010).

6 Md.—Department of Economic and Employment Development v. Lilley, 106 Md. App. 744, 666 A.2d 921 (1995).

7 Fla.—Greenberg v. Simms Merchant Police Service, 410 So. 2d 566 (Fla. 1st DCA 1982).

Questioning by referee

A referee who questioned the claimant in an effort to present the claimant with the allegations of his employer and inquire into their correctness did not deny the claimant his due process rights or deprive him of a fair hearing.

Pa.—Robinson v. Com., Unemployment Compensation Bd. of Review, 60 Pa. Commw. 275, 431 A.2d 378 (1981).

8 Wis.—Rucker v. Wisconsin Dept. of Industry, Labor and Human Relations, 101 Wis. 2d 285, 304 N.W.2d 169 (Ct. App. 1981).

9 U.S.—Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973).

Mass.—DaLomba v. Director of Division of Employment Sec., 369 Mass. 92, 337 N.E.2d 687 (1975).

N.J.—Alfonso v. Board of Review, Dept. of Labor and Industry, 89 N.J. 41, 444 A.2d 1075 (1982).

10 U.S.—Wheeler v. State of Vt., 335 F. Supp. 856 (D. Vt. 1971).

Cal.—American Federation of Labor v. Employment Dev. Dept., 88 Cal. App. 3d 811, 152 Cal. Rptr. 193 (2d Dist. 1979).

N.H.—Royer v. State Dept. of Employment Sec., 118 N.H. 673, 394 A.2d 828 (1978).

11 U.S.—Robbins v. U.S. R. R. Retirement Bd., 594 F.2d 448 (5th Cir. 1979); Gary v. Nichols, 447 F. Supp. 320 (D. Idaho 1978).

Ind.—Wilson v. Board of Indiana Employment Sec. Division, 270 Ind. 302, 385 N.E.2d 438 (1979).

12 Ark.—Pritchett v. Director of Labor, 5 Ark. App. 194, 634 S.W.2d 397 (1982).

Prolonged delay in determination of ineligibility violated due process

Fla.—Arensen v. Florida Unemployment Appeals Commission, 48 So. 3d 936 (Fla. 1st DCA 2010).

13 Ariz.—Salas v. Arizona Dept. of Economic Sec., 182 Ariz. 141, 893 P.2d 1304 (Ct. App. Div. 1 1995).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

2. Unemployment Compensation

§ 2239. Unemployment compensation proceedings—Requisites and sufficiency

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4129

Due process requires that proper notice and a full and fair hearing be provided to persons involved in an unemployment compensation benefits claim.

Due process requires that an unemployment compensation benefits claimant receive proper notice of the issues to be heard or expressly waive such notice.[1] So as to comport with due process, the notice of hearing provided to an unemployment compensation claimant must adequately convey the required information to allow the claimant to participate in the hearing, including the purpose and scope of the hearing, the date of the hearing, and the phone number when the claimant is to call in for a telephonic hearing.[2] Notification of a decision by means of regular mail is sufficient to satisfy due process.[3] It has also been considered that, notwithstanding the apparent inadequacy of notice denying unemployment compensation because of misconduct, a discharged employee is not denied due process unless he or she can show that he or she has been prejudiced as a result of such notice.[4]

Unemployment benefits hearings must comport with due process and be conducted in such a manner as to ascertain the substantial rights of parties;[5] fundamental fairness is the essence of due process.[6] More specifically, a claimant is entitled to

a full, fair, and impartial hearing which conforms to the fundamental principles of due process,[7] and which includes the right to confront and cross-examine witnesses.[8] The hearing officer is not required to assist claimants in a manner incompatible with the impartial discharge of his or her duties[9] and is not required to advise the claimant on particular evidentiary matters or specific points of law.[10]

Admitting an employer's hearsay summary of events has been found not a violation of due process.[11] However, it has also been found that the consideration of inadmissible hearsay reports deprives an unemployment compensation claimant of her constitutional rights to confront and cross-examine adverse witnesses, and thus, denies due process.[12] Ex parte communications are not necessarily a deprivation of due process.[13]

There is not necessarily a denial of due process where the employer fails to appear at a hearing.[14] There is, however, authority to the effect that conducting a hearing and closing an unemployment insurance claimant's case without either ascertaining why an employer failed to comply with an order to produce requested documents and witnesses constitutes a violation of the claimant's due process rights.[15]

Services of counsel.

Due process generally requires that the parties not be deprived of their right to counsel[16] although a state's failure to appoint counsel for a claimant seeking unemployment compensation does not violate his or her due process rights; rather, a claimant is free to hire counsel at his or her own expense.[17] Additionally, the fact that a claimant is not represented by counsel does not mean that he or she has been denied due process to a full and fair hearing.[18]

Services of interpreter.

In the absence of a request for the services of an interpreter, and lack of comprehension on the part of the claimant, there is no denial of due process because of the lack of the services of an interpreter.[19]

Telephonic hearings.

Telephone hearings of unemployment compensation claims are not necessarily a violation of due process.[20] However, where the examiner significantly compromises a petitioner's opportunity to be heard by the manner in which the particular hearing is conducted, it is to that extent violative of due process.[21]

CUMULATIVE SUPPLEMENT

Cases:

Hearing officer's decision to deny unemployment compensation claimant's request to issue several subpoenas for evidence to show that employer had a motive to falsely allege that his internal auditing work was incompetent to conceal financial improprieties, and for evidence to impugn the credibility of coworkers who complained about him, and to instead issue one subpoena ordering employer to provide "[a]ll documents that relate or pertain to claimant and/or that contain information about claimant including job performance, corrective action and/or discipline and claimant's record of employment" with employer did not violate procedural due process; officer issued a broad subpoena relevant to determining whether claimant was discharged for just cause, claimant had access to and utilized 170 pages of documents produced by employer in response to subpoena,

and claimant had the opportunity to testify at the hearing and to cross-examine witnesses produced by employer. U.S. Const. Amend. 14; Ohio Rev. Code Ann. §§ 4141.281(C)(1), 4141.281(C)(2), 4141.29(D). Reid v. MetroHealth Systems, Inc., 2017-Ohio-1154, 87 N.E.3d 879 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—Smith v. Unemployment Appeals Com'n, 751 So. 2d 639 (Fla. 1st DCA 1999).
Claimant received proper notice
An unemployment compensation claimant received proper notice of the issues to be heard, and thus, there was no due process violation; the issues to be heard were identified as whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause, and the dual nature of the inquiry was specified in writing and in advance of the hearing.
Fla.—Lopez v. A Aaron Super Rooter, Inc., 54 So. 3d 575 (Fla. 3d DCA 2011).
Notice held insufficient
An unemployment compensation claimant's rights to due process were prejudiced by inadequate notice of the issues to be considered at his administrative hearing and a denial of a meaningful opportunity to present evidence on the issues raised where the notice made no reference to a statute applicable to voluntary quitting although that statute formed the basis for the denial of benefits.
Iowa—Silva v. Employment Appeal Bd., 547 N.W.2d 232 (Iowa Ct. App. 1996).

2 S.D.—Eiler v. South Dakota Dept. of Labor and Regulation, Unemployment Ins. Div., 2013 SD 69, 838 N.W.2d 615 (S.D. 2013), cert. denied, 135 S. Ct. 336, 190 L. Ed. 2d 74 (2014).
Due process does not require that witnesses be listed in notice of hearing
Wis.—Weibel v. Clark, 87 Wis. 2d 696, 275 N.W.2d 686 (1979).

3 Pa.—Banks v. Unemployment Compensation Bd. of Review, 29 Pa. Commw. 307, 370 A.2d 1234 (1977).

4 Wis.—Weibel v. Clark, 87 Wis. 2d 696, 275 N.W.2d 686 (1979).

5 N.M.—Mississippi Potash, Inc. v. Lemon, 133 N.M. 128, 2003-NMCA-014, 61 P.3d 837 (Ct. App. 2002).

6 Colo.—Wafford v. Industrial Claim Appeals Office of State of Colo., 907 P.2d 741 (Colo. App. 1995).

7 Ill.—Figueroa v. Doherty, 303 Ill. App. 3d 46, 236 Ill. Dec. 527, 707 N.E.2d 654 (1st Dist. 1999).
Mo.—Scrivener Oil Co., Inc. v. Crider, 304 S.W.3d 261 (Mo. Ct. App. S.D. 2010).
Due process requires fair trial, not perfect one
Ark.—Bergman v. Director, Dept. of Workforce Services, 2010 Ark. App. 729, 379 S.W.3d 625 (2010).
Right to offer evidence
Colo.—Wafford v. Industrial Claim Appeals Office of State of Colo., 907 P.2d 741 (Colo. App. 1995).

8 Ark.—Bergman v. Director, Dept. of Workforce Services, 2010 Ark. App. 729, 379 S.W.3d 625 (2010).
Colo.—Wafford v. Industrial Claim Appeals Office of State of Colo., 907 P.2d 741 (Colo. App. 1995).
Pa.—Frimet v. Unemployment Compensation Bd. of Review, 78 A.3d 21 (Pa. Commw. Ct. 2013).
No denial of right to cross-examine
A claimant was not denied due process at an unemployment insurance hearing, despite the claim that she was denied the opportunity to cross-examine her employer, where the factual findings at the disciplinary hearing were properly given collateral estoppel effect, the claimant was not entitled to relitigate the factual issues of her misconduct, and in any event, the claimant was given ample opportunity to cross-examine her employer but failed to avail herself of this opportunity when she did not appear on time at one adjourned session and failed to appear at all at the final session.
N.Y.—In re Dimps, 274 A.D.2d 625, 710 N.Y.S.2d 448 (3d Dep't 2000).

9 Pa.—Horvath v. Com., Unemployment Compensation Bd. of Review, 44 Pa. Commw. 420, 403 A.2d 1073 (1979).
Presumption of impartiality
Mo.—Scrivener Oil Co., Inc. v. Crider, 304 S.W.3d 261 (Mo. Ct. App. S.D. 2010).

10 Pa.—DeMeno v. Com., Unemployment Compensation Bd. of Review, 51 Pa. Commw. 137, 413 A.2d 796 (1980).

No obligation to assume duties of counsel

Utah—Adams v. Department of Workforce Services, Workforce Appeals Bd., 2012 UT App 226, 285 P.3d 781 (Utah Ct. App. 2012).

11 Wis.—Bunker v. Labor and Industry Review Com'n, 2002 WI App 216, 257 Wis. 2d 255, 650 N.W.2d 864 (Ct. App. 2002).

12 Mont.—Bean v. Montana Bd. of Labor Appeals, 1998 MT 222, 290 Mont. 496, 965 P.2d 256 (1998).

13 Me.—Maddocks v. Unemployment Ins. Com'n, 2001 ME 60, 768 A.2d 1023 (Me. 2001).

Consideration of ex parte communication from employer

An unemployment compensation claimant was not denied a fair hearing due to Job Service's alleged consideration of ex parte communication from the employer in the form of a memorandum explaining the employer's position on issues presented in the case, as the claimant was provided a copy of such memorandum and had ample opportunity to respond to it, and there was no indication that the executive director of Job Service relied upon any substantive fact in the memorandum which was not also part of the record.

N.D.—Carlson v. Job Service North Dakota, 548 N.W.2d 389 (N.D. 1996).

14 N.Y.—In re Cordova, 277 A.D.2d 623, 715 N.Y.S.2d 551 (3d Dep't 2000).

Claimant never requested that employer be subpoenaed or that hearing be adjourned to obtain employer's testimony

N.Y.—In re Boehm, 268 A.D.2d 665, 701 N.Y.S.2d 175 (3d Dep't 2000).

15 N.Y.—In re Posner, 16 A.D.3d 940, 793 N.Y.S.2d 210 (3d Dep't 2005).

16 Ind.—Berzins v. Review Bd. of Indiana Employment Sec. Div., 439 N.E.2d 1121 (Ind. 1982).

Pa.—Frimet v. Unemployment Compensation Bd. of Review, 78 A.3d 21 (Pa. Commw. Ct. 2013).

Written notice required

Ind.—Sandlin v. Review Bd. of Indiana Employment Sec. Division, 406 N.E.2d 328 (Ind. Ct. App. 1980).

17 Idaho—Hughen v. Highland Estates, 137 Idaho 349, 48 P.3d 1238 (2002).

18 N.Y.—In re Crisalli, 279 A.D.2d 925, 719 N.Y.S.2d 768 (3d Dep't 2001).

Pa.—Platz v. Unemployment Compensation Bd. of Review, 709 A.2d 450 (Pa. Commw. Ct. 1998).

19 N.Y.—Ramsey v. Ross, 63 A.D.2d 1061, 405 N.Y.S.2d 808 (3d Dep't 1978).

20 Conn.—Addona v. Administrator, Unemployment Compensation Act, 121 Conn. App. 355, 996 A.2d 280 (2010).

Wis.—Bunker v. Labor and Industry Review Com'n, 2002 WI App 216, 257 Wis. 2d 255, 650 N.W.2d 864 (Ct. App. 2002).

Granting ex parte request for telephone hearing not violation of due process

Pa.—Chiccitt v. Unemployment Compensation Bd. of Review, 842 A.2d 540 (Pa. Commw. Ct. 2004).

A.L.R. Library

Propriety of telephone testimony or hearings in unemployment compensation proceedings, 90 A.L.R.4th 532.

21 D.C.—Sterling v. District of Columbia Dept. of Employment Services, 513 A.2d 253 (D.C. 1986).

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16D C.J.S. Constitutional Law § 2240

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

J. Social Security and Public Welfare; Unemployment Compensation

2. Unemployment Compensation

§ 2240. Unemployment compensation proceedings—Review

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4129

Due process requirements must be satisfied on the review of unemployment compensation proceedings.

A claimant is not denied due process where he or she chooses not to avail him- or herself of the benefits of an appeal.[1] Barring extraordinary circumstances,[2] in which case there is a due process right to an evidentiary hearing on the question whether the appeal has been timely filed,[3] or whether the late filing was due to circumstances beyond the control of the claimant,[4] due process is not denied by the dismissal of an appeal because it has not been filed within the prescribed time.[5]

All the parties must be given a reasonable opportunity for a fair hearing,[6] and both the employer[7] and the claimant must be given notice of the issues to be raised on appeal.[8] An unemployment benefits claimant is deprived of due process when, on appeal, an issue is considered of which the claimant has no notice.[9] If a notice of appeal issued to a discharged employee fails to apprise the employee that he or she may be liable for benefits previously paid and that any required repayment would be charged against any future claim, it violates the protections of due process.[10] A notice, by means of regular mail, of a hearing before a reviewing authority meets due process requirements even if the claimant does not receive the notice.[11]

Due process requires that the reviewing authority have the benefit of the examiner's personal impressions of material witnesses before rejecting the examiner's recommendations, and due process is not denied if the hearing examiner communicates to the reviewing authority regarding the employee's contentions and credibility even though the employee does not receive a copy of the communication and the chance to rebut it.[12] Hearsay evidence is admissible in proceedings before the reviewing authority; technical rules of evidence do not apply.[13] A claimant has an unconditional right to subpoena witnesses to testify on his or her behalf.[14] Since a hearing before a reviewing authority is a civil proceeding, the drawing of an adverse inference from the claimant's failure to testify does not offend his or her due process rights.[15] In addition, a hearing before a review authority in the absence of the claimant does not deny due process.[16]

It has been considered that due process is not denied if the reviewing authority, without notice and hearing, adopts the findings and conclusions of the referee.[17] The fact that the reviewing authority does not give special weight to the referee's determination as to the credibility of the witnesses does not deny due process.[18]

Determination.

The opinion of the reviewing authority does not deny due process even though it does not specifically state the reasons for the decision if they can be adequately inferred.[19] In the proper exercise of its powers of review, the reviewing authority may, without denying due process, affirm the denial of benefits while modifying the grounds based on the evidence presented below.[20]

CUMULATIVE SUPPLEMENT

Cases:

Delay of 130 days in providing notice to claimant of employer's appeal of decision awarding unemployment benefits did not violate claimant's procedural due process rights; Department of Workforce Solutions had right to recoup benefits, claimant received benefits during appeal, claimant was aware of possibility of appeal and possibility of having to repay benefits, notice included information necessary to inform claimant of issues to be addressed so that she could prepare for hearing, and earlier notice would not have changed outcome of proceeding. U.S.C.A. Const.Amend. 14; West's NMSA Const. Art. 2, § 18; N.M.Admin.Code 11.3.300.308. New Mexico Dept. of Workforce Solutions v. Garduño, 2016-NMSC-002, 363 P.3d 1176 (N.M. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Mich.—Herman v. Chrysler Corp., 106 Mich. App. 709, 308 N.W.2d 616 (1981).
Employer had ample opportunity to defend its interests at initial hearing
Idaho—Hopkins v. Pneumotech, Inc., 152 Idaho 611, 272 P.3d 1242 (2012).

2 Fla.—Polatnick v. Florida Dept. of Commerce, Division of Employment Sec., 349 So. 2d 203 (Fla. 3d DCA 1977).

3 Fla.—Price v. Unemployment Appeals Com'n, 889 So. 2d 861 (Fla. 4th DCA 2004).
Post office mistake raised due process implications
An unemployment compensation claimant's contention that a post office mistake in delivering mail prevented him from filing an appeal to the Unemployment Appeals Commission (UAC) within 20 days after

the mailing of the notice of dismissal of his initial appeal to UAC raised due process implications, and thus, UAC had to hold an evidentiary hearing concerning the date that the claimant received notice of the initial dismissal of the appeal, and the timeliness of his filing of the notice of appeal.

Fla.—Griffin v. Unemployment Appeals Com'n, 868 So. 2d 1262 (Fla. 4th DCA 2004).

4 Ark.—Paulino v. Daniels, 269 Ark. 676, 599 S.W.2d 760 (Ct. App. 1980).

Fla.—Giles v. Reemployment Assistance Appeals Com'n, 101 So. 3d 427 (Fla. 1st DCA 2012).

"Good cause" exception

The Department of Labor's procedures for notifying an unemployment compensation claimant of a "good cause" exception to the 10-day filing requirement to appeal an adverse decision of an appeal tribunal violated a claimant's due process rights; the notice and transmittal letter lacked an adequate explanation of how the claimant could take advantage of the good cause exception to have an appeal heard by the board of review, and the notice and certification did not explain or fully disclose the good cause exception.

N.J.—Garzon v. Bd. of Review, Dept. of Labor, 370 N.J. Super. 1, 850 A.2d 524 (App. Div. 2004).

5 N.J.—Alfonso v. Board of Review, Dept. of Labor and Industry, 176 N.J. Super. 493, 423 A.2d 1006 (App. Div. 1980), judgment aff'd, 89 N.J. 41, 444 A.2d 1075 (1982).

N.D.—Amoco Oil Co. v. Job Service North Dakota, 311 N.W.2d 558 (N.D. 1981).

6 Ind.—Wolf Lake Pub, Inc. v. Review Bd. of Indiana Dept. of Workforce Development, 930 N.E.2d 1138 (Ind. Ct. App. 2010).

Me.—Martin v. Unemployment Ins. Com'n, 1998 ME 271, 723 A.2d 412 (Me. 1998).

Mo.—O'Connor v. Bonzai Express of St. Louis, 103 S.W.3d 882 (Mo. Ct. App. E.D. 2003).

Referee has considerable discretion in controlling hearing procedures

Mo.—Miller v. Bank of the West, 264 S.W.3d 673 (Mo. Ct. App. W.D. 2008).

Right to request oral argument

Pa.—McFadden v. Unemployment Compensation Bd. of Review, 806 A.2d 955 (Pa. Commw. Ct. 2002).

Failure to transcribe cross-examination testimony

Error, if any, in failing to transcribe into an unemployment compensation tax liability hearing record four and a half minutes of the claimant's cross-examination testimony was insufficient to support the employer's claim that it was denied procedural due process on review, where the employer failed to demonstrate how it had been prejudiced by the missing portion of the transcript, and rest of the record was fully sufficient to permit review of the dispositive issues on appeal.

Colo.—SZL, Inc. v. Industrial Claim Appeals Office, 254 P.3d 1180 (Colo. App. 2011).

7 Fla.—Hardee County Com'rs v. Florida Dept. of Commerce, Division of Employment Sec., 343 So. 2d 842 (Fla. 2d DCA 1976).

8 Fla.—Smith v. Unemployment Appeals Com'n, 751 So. 2d 639 (Fla. 1st DCA 1999).

Notice held sufficient

An unemployment compensation claimant had sufficient notice that the issue of whether she had voluntarily left her employment without good cause would be raised before the Department of Employment Security Board of Review, such that she was not deprived of due process, although the referee had concluded that such issue was not raised by either party, where the employer's objections to the claimant's benefits specifically mentioned voluntary termination, and the notice of hearing before the referee identified voluntary termination as an issue.

Ill.—Arroyo v. Doherty, 296 Ill. App. 3d 839, 231 Ill. Dec. 231, 695 N.E.2d 1350 (1st Dist. 1998).

9 Fla.—Montalbano v. Unemployment Appeals Com'n, 873 So. 2d 417 (Fla. 4th DCA 2004).

10 Minn.—Schulte v. Transportation Unlimited, Inc., 354 N.W.2d 830 (Minn. 1984).

11 Fla.—Colson v. Florida Unemployment Appeals Com'n, 76 So. 3d 1042 (Fla. 1st DCA 2011).

Ind.—Osborn v. Review Bd. of Indiana Employment Sec. Division, 178 Ind. App. 22, 381 N.E.2d 495 (1978).

12 Wis.—Rucker v. Wisconsin Dept. of Industry, Labor and Human Relations, 101 Wis. 2d 285, 304 N.W.2d 169 (Ct. App. 1981).

13 N.Y.—Claim of Campos, 253 A.D.2d 935, 678 N.Y.S.2d 151 (3d Dep't 1998).

14 Fla.—Spiegel v. Lavis Plumbing Services, 373 So. 2d 72 (Fla. 3d DCA 1979).

15 N.J.—Bastas v. Board of Review in Dept. of Labor and Industry, 155 N.J. Super. 312, 382 A.2d 923 (App. Div. 1978).

16 Ohio—Walton v. Ohio State Bureau of Employment Services, 2002-Ohio-681, 2002 WL 243310 (Ohio Ct. App. 10th Dist. Franklin County 2002).

17 Ind.—Whirlpool Corp. v. Review Bd. of Indiana Employment Sec. Div., 438 N.E.2d 775 (Ind. Ct. App. 1982).

N.Y.—Green v. Ross, 54 A.D.2d 1049, 388 N.Y.S.2d 723 (3d Dep't 1976).

Additional findings not required

The record supported the findings of the referee, and thus, due process did not require the board of review, which had adopted the referee's findings, to make additional findings following a remand hearing.

Pa.—Bowers v. Com., Unemployment Compensation Bd. of Review, 43 Pa. Commw. 300, 402 A.2d 308 (1979).

18 Pa.—Unemployment Compensation Bd. of Review v. Wright, 21 Pa. Commw. 637, 347 A.2d 328 (1975).

19 U.S.—Moore v. Ross, 687 F.2d 604 (2d Cir. 1982).

20 Ark.—Williams v. Employment Sec. Division Arkansas Dept. of Labor, 267 Ark. 1156, 594 S.W.2d 52 (Ct. App. 1980).

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16D C.J.S. Constitutional Law VIII XXII K Refs.

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

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Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Due Process
A.L.R. Index, Fifth Amendment
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Police Power
West's A.L.R. Digest, Constitutional Law 3903, 4092, 4093, 4156, 4157 to 4162, 4165(1), 4173(1) to 4173(4), 4177, 4182, 4187, 4188, 4260 to 4297, 4301 to 4304, 4330

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2241. Regulation of business

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3903

Business regulation is not violative of due process of law where it is rationally related to, and implements, a legitimate legislative objective.

There is little difference between state and federal due process standards in the area of economic regulation.[1] Federal and state business regulation does not violate the Due Process Clauses of the Fifth and Fourteenth Amendments where it is rationally related to and implements a legitimate legislative purpose,[2] such as where it is designed to preserve public health, morals, comfort, order, and safety,[3] in implementation of the police power.[4] The constitutional right to engage in a lawful business does not prevent legislation prohibiting any business which is inherently vicious and harmful.[5] However, the regulation of business cannot be arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt.[6]

For substantive due process claims, courts apply a deferential standard of review when dealing with legislation regarding economic interests.[7] However, such deference does not demand judicial blindness to the history of a challenged rule or the context of its adoption, nor does it require courts to accept nonsensical explanations for regulation.[8]

It is not relevant, in examining economic legislation that is challenged on due process grounds, that the law is the product of lobbying by special interests, such as an industry or profession.[9]

Economic legislation is not unconstitutional under the Due Process Clause solely because it upsets otherwise settled expectations[10] or because it imposes a new duty or liability based on past acts.[11] Moreover, the legislature need not produce mathematical precision in the fit between justification and means when enacting economic legislation for the legislation to survive a substantive due process challenge.[12]

CUMULATIVE SUPPLEMENT

Cases:

Executive order that declared the entirety of the Commonwealth a disaster area, and required the closure of all non-life-sustaining businesses to reduce the spread of COVID-19 did not deprive the owners/operators of non-life-sustaining businesses of procedural due process; due to the urgent need to protect the citizens of the Commonwealth from sickness and death, the Governor was not in a position to provide for pre-deprivation notice and an opportunity to be heard, the waiver, or review process provided businesses an opportunity to challenge, and the Governor's office to reconsider, whether placement of a business on the non-life-sustaining list was a proper categorization, and any loss of property rights would be temporary. U.S. Const. Amend. 14. Friends of Danny DeVito v. Wolf, 227 A.3d 872 (Pa. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Conn.—Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979).
Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 (2001).

2 U.S.—Brown v. Hovatter, 561 F.3d 357 (4th Cir. 2009); TCF Nat. Bank v. Bernanke, 643 F.3d 1158 (8th Cir. 2011); Independent Training and Apprenticeship Program v. California Dept. of Indus. Relations, 730 F.3d 1024 (9th Cir. 2013).
Ga.—Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).
Idaho—Guzman v. Piercy, 155 Idaho 928, 318 P.3d 918 (2014).
Ky.—Reynolds Enterprises, Inc. v. Kentucky Bd. of Embalmers and Funeral Directors, 382 S.W.3d 47 (Ky. Ct. App. 2012).
Neb.—Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).
Utah—McBride v. Utah State Bar, 2010 UT 60, 242 P.3d 769 (Utah 2010).
Legislation reasonably directed to meet legitimate public goal
U.S.—School Dist. of Philadelphia v. Pennsylvania Milk Marketing Bd., 877 F. Supp. 245, 98 Ed. Law Rep. 202 (E.D. Pa. 1995).

3 Conn.—C & H Enterprises, Inc. v. Commissioner of Motor Vehicles, 167 Conn. 304, 355 A.2d 247 (1974).
Mich.—People v. McDonald, 67 Mich. App. 64, 240 N.W.2d 268 (1976).
Utah—Redwood Gym v. Salt Lake County Commission, 624 P.2d 1138 (Utah 1981).

4 Cal.—California Gillnetters Assn. v. Department of Fish & Game, 39 Cal. App. 4th 1145, 46 Cal. Rptr. 2d 338 (4th Dist. 1995).
Ill.—Chicago Real Estate Bd. v. City of Chicago, 36 Ill. 2d 530, 224 N.E.2d 793 (1967).
Md.—Massage Parlors, Inc. v. Mayor and City Council of Baltimore, 284 Md. 490, 398 A.2d 52 (1979).

5 Md.—Howard Sports Daily v. Weller, 179 Md. 355, 18 A.2d 210 (1941).

Commercial blood bank

A statute, which proscribed the operation of a blood bank for commercial purposes, was a valid exercise of the state's police power and thus did not deny due process.

Wis.—State v. Interstate Blood Bank, Inc., 65 Wis. 2d 482, 222 N.W.2d 912 (1974).

6 U.S.—Templeton Coal Co., Inc. v. Shalala, 882 F. Supp. 799 (S.D. Ind. 1995), decision aff'd, 75 F.3d 1114 (7th Cir. 1996).

Cal.—Beeman v. Anthem Prescription Management, LLC, 58 Cal. 4th 329, 165 Cal. Rptr. 3d 800, 315 P.3d 71 (2013).

Neb.—Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).

N.Y.—Brightonian Nursing Home v. Daines, 21 N.Y.3d 570, 977 N.Y.S.2d 147, 999 N.E.2d 510 (2013).

Burden of proof

The burden is on the one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.

U.S.—TCF Nat. Bank v. Bernanke, 643 F.3d 1158 (8th Cir. 2011).

7 Idaho—Guzman v. Piercy, 155 Idaho 928, 318 P.3d 918 (2014).

Highly deferential standard

U.S.—TCF Nat. Bank v. Bernanke, 643 F.3d 1158 (8th Cir. 2011).

8 U.S.—St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013), cert. denied, 134 S. Ct. 423, 187 L. Ed. 2d 281 (2013).

9 Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 (2001).

10 U.S.—In re Blue Diamond Coal Co., 79 F.3d 516, 1996 FED App. 0097P (6th Cir. 1996).

11 U.S.—In re Blue Diamond Coal Co., 79 F.3d 516, 1996 FED App. 0097P (6th Cir. 1996); Gibson v. American Cyanamid Co., 760 F.3d 600 (7th Cir. 2014).

12 U.S.—American Exp. Travel Related Services Co., Inc. v. Kentucky, 641 F.3d 685 (6th Cir. 2011).

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16D C.J.S. Constitutional Law § 2242

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2242. Right to practice profession or occupation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4156, 4157, 4165(1), 4260, 4261

Although each person possesses a protected due process interest in the practice of a profession or occupation, this right is subject to reasonable government regulation.

Every citizen has the right to pursue a trade, occupation, business, or profession;[1] and each person possesses a protected due process interest in the practice of that profession.[2] In other words, an individual has a liberty[3] and property,[4] interest in pursuing an occupation, which is protected by the Due Process Clauses of the Fifth[5] and the Fourteenth[6] Amendments to the United States Constitution, as well as by similar provisions in state constitutions.[7]

The right to pursue a trade, occupation, business, or profession is subject to reasonable government regulation,[8] short of complete prohibition.[9] Thus, state regulation of professional or occupational conduct is constitutional where the regulation bears a reasonable or rational relationship to the matter sought to be regulated.[10] A restriction on the conduct of a profession will run afoul of substantive due process rights only if it is irrational.[11] If any conceivable legitimate public policy for the

enactment is either apparent or offered by those defending the enactment, the party challenging it must disprove the factual basis for the justification.[12]

A state legislature, in the exercise of its police power for the promotion of the public welfare, may prescribe the qualifications to be required of persons in order that they may be authorized to engage in the practice of certain professions or occupations requiring special knowledge or skill, or intimately affecting the public welfare.[13]

Footnotes

1 Ill.—Lyon v. Department of Children and Family Services, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).

2 Alaska—Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors, 205 P.3d 326 (Alaska 2009).
Md.—VNA Hospice of Maryland v. Department of Health and Mental Hygiene, 406 Md. 584, 961 A.2d 557 (2008).
Pa.—Khan v. State Bd. of Auctioneer Examiners, 577 Pa. 166, 842 A.2d 936 (2004).
Generalized or some right
U.S.—Hayes v. New York Attorney Grievance Committee of the Eight Judicial Dist., 672 F.3d 158 (2d Cir. 2012); Llamas v. Butte Community College Dist., 238 F.3d 1123 (9th Cir. 2001), as amended, (Mar. 14, 2001).
Right to work
The right to work for a living in the common occupations of a community is of the very essence of personal freedom and opportunity that it was the purpose of the Due Process Clause to secure.
U.S.—Martin v. Memorial Hosp. at Gulfport, 130 F.3d 1143 (5th Cir. 1997).

3 U.S.—Mead v. Independence Ass'n, 684 F.3d 226 (1st Cir. 2012); Thomas v. Independence Tp., 463 F.3d 285 (3d Cir. 2006); U.S. v. Aldawsari, 683 F.3d 660, 82 Fed. R. Serv. 3d 1074 (5th Cir. 2012); Habhab v. Hon, 536 F.3d 963 (8th Cir. 2008).
Colo.—Carlson v. Industrial Claim Appeals Office of the State of Colo., 950 P.2d 663 (Colo. App. 1997).
Haw.—Minton v. Quintal, 131 Haw. 167, 317 P.3d 1 (2013), as corrected, (Dec. 27, 2013).
Ill.—Lyon v. Department of Children and Family Services, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).
Mo.—Stone v. Missouri Dept. of Health and Senior Services, 350 S.W.3d 14 (Mo. 2011).
Nev.—State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 42 P.3d 233 (2002).
N.H.—Petition of Preisendorfer, 143 N.H. 50, 719 A.2d 590 (1998).
S.C.—Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).
Tenn.—Robertson v. Tennessee Bd. of Social Worker Certification and Licensure, 227 S.W.3d 7 (Tenn. 2007).
Vt.—Herrera v. Union No. 39 School Dist., 181 Vt. 198, 2006 VT 83, 917 A.2d 923, 217 Ed. Law Rep. 598 (2006).
Wash.—Amunrud v. Board of Appeals, 158 Wash. 2d 208, 143 P.3d 571, 30 A.L.R.6th 775 (2006).

4 U.S.—Bruns v. National Credit Union Admin., 122 F.3d 1251 (9th Cir. 1997); Ward v. Anderson, 494 F.3d 929 (10th Cir. 2007).
Idaho—Williams v. Idaho State Bd. of Real Estate Appraisers, 157 Idaho 496, 337 P.3d 655 (2014).
Ill.—Lyon v. Department of Children and Family Services, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).
S.C.—Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).
Tenn.—Robertson v. Tennessee Bd. of Social Worker Certification and Licensure, 227 S.W.3d 7 (Tenn. 2007).
As to a property interest in a permit or license, see § 2243.

5 U.S.—U.S. v. Robel, 389 U.S. 258, 88 S. Ct. 419, 19 L. Ed. 2d 508 (1967); Bruns v. National Credit Union Admin., 122 F.3d 1251 (9th Cir. 1997).

Tenn.—State v. AAA Aaron's Action Agency Bail Bonds, Inc., 993 S.W.2d 81 (Tenn. Crim. App. 1998).

6 U.S.—Thomas v. Independence Tp., 463 F.3d 285 (3d Cir. 2006); Habhab v. Hon, 536 F.3d 963 (8th Cir. 2008).

Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

S.C.—Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).

Tenn.—Robertson v. Tennessee Bd. of Social Worker Certification and Licensure, 227 S.W.3d 7 (Tenn. 2007).

Imposition of professional requirements through third parties

Under the substantive due process protections afforded by the Fourteenth Amendment, a state cannot impose requirements on the practice of a profession through third parties, like hospitals, that it could not impose directly.

U.S.—Planned Parenthood of Wisconsin, Inc. v. Van Hollen, 23 F. Supp. 3d 956 (W.D. Wis. 2014).

7 Cal.—In re Marriage of Flaherty, 31 Cal. 3d 637, 183 Cal. Rptr. 508, 646 P.2d 179 (1982).

Haw.—Maeda v. Amemiya, 60 Haw. 662, 594 P.2d 136 (1979).

Idaho—Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).

Tenn.—Robertson v. Tennessee Bd. of Social Worker Certification and Licensure, 227 S.W.3d 7 (Tenn. 2007).

8 U.S.—Conn v. Gabbert, 526 U.S. 286, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999).

Cal.—Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).

Md.—VNA Hospice of Maryland v. Department of Health and Mental Hygiene, 406 Md. 584, 961 A.2d 557 (2008).

9 Cal.—Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).

As to interference with the right to engage in a business, occupation, or profession, generally, see § 2243.

10 U.S.—Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005); Lange-Kessler v. Department of Educ. of the State of N.Y., 109 F.3d 137 (2d Cir. 1997); Locke v. Shore, 634 F.3d 1185 (11th Cir. 2011).

Alaska—Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors, 205 P.3d 326 (Alaska 2009).

Ill.—Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).

Presumption of rationality

Pa.—Khan v. State Bd. of Auctioneer Examiners, 577 Pa. 166, 842 A.2d 936 (2004).

Not subject to strict scrutiny

U.S.—Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005); Litmon v. Harris, 768 F.3d 1237 (9th Cir. 2014).

11 U.S.—In re Crawford, 194 F.3d 954 (9th Cir. 1999).

12 Alaska—Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors, 205 P.3d 326 (Alaska 2009).

13 Idaho—Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).

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16D C.J.S. Constitutional Law § 2243

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2243. Right to practice profession or occupation—Interference with right to engage in business, occupation, or profession

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4157 to 4159, 4177, 4182, 4188

An individual has the right to engage in a chosen profession or occupation without unreasonable governmental interference or deprivation; however, this right does not extend to the right to a specific job.

An individual has the right to engage in a chosen profession or occupation without unreasonable governmental interference or deprivation.[1] For purposes of a due process claim, a plaintiff asserting interference with an interest in employment in an occupation of choice may demonstrate that the government's action precludes him or her, whether formally or informally, from such a broad range of opportunities that it interferes with the constitutionally protected right to follow a chosen trade or profession.[2] Thus, the liberty to follow a trade, profession, or other calling, protected by the Due Process Clause, does not extend to the right to a specific job.[3] An individual's employment is protected by the Due Process Clause if a dismissal effectively precludes future work in the individual's chosen profession;[4] however, merely losing one position in a profession without being foreclosed from reentering the field is generally not sufficient.[5]

The right to practice a chosen profession is a valuable property right which cannot be deprived unless one is provided with the safeguards of due process.[6] Thus, before one is affected by the deprival or abridgement of the right to engage in a business or profession, he or she must be given reasonable notice of the charges, notice of the time and place of a hearing, and thereafter a fair hearing on the charges.[7]

CUMULATIVE SUPPLEMENT

Cases:

There was no First Amendment right for 18- to 21 year olds to own an adult business, and thus rational-basis review applied to challenge to city's sexually oriented business ordinance, which prohibited 18- to 21 year olds from being owners, officers, or directors of a sexually oriented business. U.S. Const. Amend. 1, 14. American Entertainers, L.L.C. v. City of Rocky Mount, North Carolina, 888 F.3d 707 (4th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Tenn.—Robertson v. Tennessee Bd. of Social Worker Certification and Licensure, 227 S.W.3d 7 (Tenn. 2007).
As to employment as a particular property right protected by the Due Process Clause, see § 1900.

2 U.S.—PDK Labs Inc. v. Ashcroft, 338 F. Supp. 2d 1 (D.D.C. 2004).
Haw.—Minton v. Quintal, 131 Haw. 167, 317 P.3d 1 (2013), as corrected, (Dec. 27, 2013).

3 U.S.—Habhab v. Hon, 536 F.3d 963 (8th Cir. 2008); Blantz v. California Dept. of Corrections and Rehabilitation, Div. of Correctional Health Care Services, 727 F.3d 917 (9th Cir. 2013).
Colo.—Carlson v. Industrial Claim Appeals Office of the State of Colo., 950 P.2d 663 (Colo. App. 1997).

4 U.S.—Braswell v. Shoreline Fire Dept., 622 F.3d 1099 (9th Cir. 2010).

5 Haw.—Minton v. Quintal, 131 Haw. 167, 317 P.3d 1 (2013), as corrected, (Dec. 27, 2013).

6 Idaho—Williams v. Idaho State Bd. of Real Estate Appraisers, 157 Idaho 496, 337 P.3d 655 (2014).

7 U.S.—Atwell v. Lisle Park Dist., 286 F.3d 987 (7th Cir. 2002).
Cal.—Gray v. Superior Court, 125 Cal. App. 4th 629, 23 Cal. Rptr. 3d 50 (1st Dist. 2005).
Posttermination procedures not sufficient
Where an employee is fired in violation of his or her due process rights, the availability of posttermination grievance procedures will not ordinarily cure the violation; thus, even where a discharged employee receives a posttermination hearing to review an adverse personnel action, the pretermination hearing still needs to be extensive enough to guard against mistaken decisions, and accordingly, the employee is entitled to notice, an explanation of the employer's evidence, and an opportunity to present the employee's side of the story.
Wyo.—Town of Evansville Police Dept. v. Porter, 2011 WY 86, 256 P.3d 476 (Wyo. 2011).
No violation of procedural due process
Illinois Department of Children and Family Services' (DFCS) giving of inadequate formal notice of "indicated" findings made during child neglect investigations to employees of child care providers did not violate procedural due process, where the employees received redacted case files detailing some of the evidence against them, and had the opportunity to examine and copy information upon which the DFCS intended to rely during their administrative proceedings.
U.S.—Doyle v. Camelot Care Centers, Inc., 305 F.3d 603 (7th Cir. 2002).

16D C.J.S. Constitutional Law § 2244

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2244. Right to practice profession or occupation—Occupational or professional reputation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4161, 4162, 4173(1) to 4173(4)

A person has a protected liberty interest, for due process purposes, in his or her reputation, good name, honor, and integrity.

A person has a protected liberty interest, for due process purposes, in his or her reputation, good name, honor, and integrity, as well as in being free to move about, live, and practice his or her profession without the burden of an unjustified label of infamy.[1] To establish a constitutional claim for defamation amounting to the deprivation of a liberty interest, a plaintiff must prove: (1) reputational harm, and (2) a tangible alteration of a legal right or status, such as the loss of future employment.[2] If a state actor casts doubt on an individual's reputation or character in such a manner that it becomes virtually impossible for that person to find employment in his or her chosen field, then the government has infringed upon that individual's liberty interest to pursue an occupation of choice.[3] However, the damage must be so severe to an individual's reputation as to deprive that individual of other employment opportunities;[4] mere defamation by the government does not deprive a person of liberty, even when it causes serious impairment of one's future employment.[5]

Some courts refer to a "stigma plus" test, which requires a disability to be placed on a person in addition to the defamation or reputational damage by the government.[6] More specifically, under the "stigma plus" test for establishing deprivation of liberty based on governmental defamation, due process protections apply if: (1) the defendant made stigmatizing comments about the plaintiff; (2) the comments are false; (3) the defendant made the reason or reasons public; and (4) the plaintiff suffered a tangible loss of other employment opportunities as a result of the public disclosure.[7] In the context of termination of at-will public employment, more is required to allege the necessary level of defamation and dissemination in a stigma-plus due process claim than the kind of damage to reputation sufficient for a simple tort defamation claim.[8] The requisite stigma for a stigma-plus claim has generally been found when a defendant has accused a plaintiff of serious character defects, such as dishonesty, immorality, criminality, racism, and the like, and it must be more than allegations of incompetence or the fact of the employment decision itself.[9] In determining the degree of dissemination that satisfies the public disclosure requirement, courts must look to the potential effect of the dissemination on the plaintiff's standing in the community and the foreclosure of job opportunities.[10] The public-disclosure element requires that a defendant actually disseminate the stigmatizing comments in a way that would reach potential future employers or the community at large.[11]

For the defamation or stigmatization of a government employee to give rise to a right to procedural due process, it must be accompanied by a discharge from government employment or at least a demotion in rank and pay,[12] or be conjoined with an official personnel action to formally deprive the employee of a legal right[13] or so severely impair the employee's ability to take advantage of a legal right as practically to extinguish it.[14] Thus, statements accompanying a public employee's termination of employment will implicate a liberty interest, for due process purposes, when they denigrate the employee's competence as a professional and impugn the employee's professional reputation in such a fashion as to effectively put a significant roadblock in that employee's continued ability to practice his or her profession.[15]

Once the termination qualifies as stigma plus, a public employee's due process rights are vindicated by a pretermination name-clearing hearing giving the employee an opportunity to respond,[16] which must be requested by the employee.[17] This hearing need not be elaborate, and even an informal meeting with supervisors may constitute a sufficient pretermination hearing.[18] However, due process is violated if the government employee challenges the substantial truth of the defamatory statement and has not been given an opportunity for a name-clearing hearing;[19] if no name-clearing hearing is provided, or if the hearing is inadequate, the former employee may sue for monetary damages.[20]

CUMULATIVE SUPPLEMENT

Cases:

To establish a deprivation of a liberty interest entitling her to a name-clearing hearing, public employee must show that: (1) she was stigmatized by the statements; (2) those statements were made public by the administrators; and (3) she denied the stigmatizing statements. U.S. Const. Amend. 14. Correia v. Jones, 943 F.3d 845 (8th Cir. 2019).

Pilot whose pilot and medical certificates were revoked following a positive drug test, and who brought state court negligence action against company that had collected his urine sample, did not have due process right to release of his urine sample for DNA testing, in the hope that such testing would prove the sample was not his, even though pilot claimed that Department of Transportation's (DOT) refusal to consent to the release of his urine sample for DNA testing effectively blocked his access to state court; pilot's liberty interest in being free of government-imposed stigma on his professional reputation was insufficient to create right to DNA testing. U.S. Const. Amend. 5; 49 C.F.R. § 40.13. Swaters v. United States Department of Transportation, 826 F.3d 507 (D.C. Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Joelson v. U.S., 86 F.3d 1413, 1996 FED App. 0178P (6th Cir. 1996).

Reputation per se not protected

Reputation per se is not a protected liberty interest, and, without more, defamation or stigmatization by the government does not give rise to any right to procedural due process, no matter how serious the harm to the subject's good name or the impairment of future employment prospects flowing from such reputational harm.

D.C.—Grant v. District of Columbia, 908 A.2d 1173 (D.C. 2006).

As to employment as a particular property right protected by the Due Process Clause, see § 1900.

2 U.S.—Bledsoe v. City of Horn Lake, Miss., 449 F.3d 650 (5th Cir. 2006); Jones v. McNeese, 746 F.3d 887 (8th Cir. 2014).

Alteration of legal status

It may be that a resulting inability to find work in the defamed person's chosen profession is itself an alteration of legal status that would give rise to a due process claim on the part of a nongovernment employee whose employment was terminated because of the government's defamation.

U.S.—Hojnacki v. Klein-Acosta, 285 F.3d 544 (7th Cir. 2002).

3 U.S.—O'Gorman v. City of Chicago, 777 F.3d 885 (7th Cir. 2015).

4 U.S.—Blantz v. California Dept. of Corrections and Rehabilitation, Div. of Correctional Health Care Services, 727 F.3d 917 (9th Cir. 2013).

Permanent or protracted exclusion required

Stigmatizing statements that merely cause reduced economic returns and diminished prestige but not permanent exclusion from, or protracted interruption of, gainful employment within the trade or profession do not constitute a deprivation of liberty in violation of the Due Process Clause.

U.S.—Blantz v. California Dept. of Corrections and Rehabilitation, Div. of Correctional Health Care Services, 727 F.3d 917 (9th Cir. 2013).

Plaintiff must allege virtual impossibility of finding new employment

U.S.—Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

5 U.S.—Khan v. Bland, 630 F.3d 519 (7th Cir. 2010); Trifax Corp. v. District of Columbia, 314 F.3d 641 (D.C. Cir. 2003).

Colo.—Perez v. Denver Public Schools, 919 P.2d 960, 111 Ed. Law Rep. 537 (Colo. App. 1996).

No deprivation upon accusation of criminal conduct

U.S.—McMahon v. Kindlarski, 512 F.3d 983 (7th Cir. 2008).

No deprivation by being listed as child sex abuser

U.S.—Smith ex rel. Smith v. Siegelman, 322 F.3d 1290 (11th Cir. 2003).

6 U.S.—Spetalieri v. Kavanaugh, 36 F. Supp. 2d 92 (N.D. N.Y. 1998).

Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

Vt.—Herrera v. Union No. 39 School Dist., 186 Vt. 1, 2009 VT 35, 975 A.2d 619, 246 Ed. Law Rep. 877 (2009).

"Reputation plus"

U.S.—Trifax Corp. v. District of Columbia, 314 F.3d 641 (D.C. Cir. 2003).

A.L.R. Library

Application of Stigma-Plus Due Process Claims Other than Education Context, 95 A.L.R.6th 341.

Application of Stigma-Plus Due Process Claims to Education Context, 41 A.L.R.6th 391.

7 U.S.—Sciolino v. City of Newport News, Va., 480 F.3d 642 (4th Cir. 2007); Whiting v. University of Southern Mississippi, 451 F.3d 339, 210 Ed. Law Rep. 575 (5th Cir. 2006); Guzman v. Shewry, 552 F.3d 941 (9th Cir. 2009); McDonald v. Wise, 769 F.3d 1202 (10th Cir. 2014).

Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

8 Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

9 U.S.—Ridpath v. Board of Governors Marshall University, 447 F.3d 292, 209 Ed. Law Rep. 32 (4th Cir. 2006); Stodghill v. Wellston School Dist., 512 F.3d 472, 228 Ed. Law Rep. 696 (8th Cir. 2008).
Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

10 Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

11 U.S.—Palka v. Shelton, 623 F.3d 447 (7th Cir. 2010).

12 D.C.—Grant v. District of Columbia, 908 A.2d 1173 (D.C. 2006).

13 D.C.—Grant v. District of Columbia, 908 A.2d 1173 (D.C. 2006) (placing an employee on paid administrative leave pending an internal investigation did not deprive the employee of due process where the employee was not fired from his job and he was not demoted, nor did he suffer any loss of pay or other benefits to which he was entitled).

14 D.C.—Grant v. District of Columbia, 908 A.2d 1173 (D.C. 2006).

15 Vt.—Herrera v. Union No. 39 School Dist., 186 Vt. 1, 2009 VT 35, 975 A.2d 619, 246 Ed. Law Rep. 877 (2009).

16 U.S.—Christiansen v. West Branch Community School Dist., 674 F.3d 927, 279 Ed. Law Rep. 43 (8th Cir. 2012); McDonald v. Wise, 769 F.3d 1202 (10th Cir. 2014).
Iowa—Jones v. University of Iowa, 836 N.W.2d 127, 297 Ed. Law Rep. 495 (Iowa 2013).
Vt.—Herrera v. Union No. 39 School Dist., 186 Vt. 1, 2009 VT 35, 975 A.2d 619, 246 Ed. Law Rep. 877 (2009).
As to notice and the opportunity to be heard, generally, see § 1885.

17 U.S.—Bledsoe v. City of Horn Lake, Miss., 449 F.3d 650 (5th Cir. 2006); Floyd-Gimon v. University of Arkansas for Medical Sciences ex rel. Bd. of Trustees of University of Arkansas, 716 F.3d 1141, 293 Ed. Law Rep. 722 (8th Cir. 2013).

18 Iowa—Jones v. University of Iowa, 836 N.W.2d 127, 297 Ed. Law Rep. 495 (Iowa 2013).
Writ of mandamus available
A former chief of police was not deprived of due process when denied a name-clearing hearing after he was terminated as chief of police where a writ of mandamus was a procedural remedy available to cure the refusal to hold a name-clearing hearing.
Ga.—McBride v. Murray, 287 Ga. 99, 694 S.E.2d 99 (2010).
Unemployment compensation hearing not an adequate substitute
U.S.—McDonald v. Wise, 769 F.3d 1202 (10th Cir. 2014).

19 U.S.—Rush v. Perryman, 579 F.3d 908, 248 Ed. Law Rep. 599 (8th Cir. 2009).
Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

20 Neb.—Potter v. Board of Regents of the University of Nebraska, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2245. Vagueness

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3903, 4260

Business regulations are generally subject to a relaxed vagueness test.

The degree of vagueness tolerated in a statute under the Due Process Clause varies with its type, and economic regulations are generally subject to a relaxed vagueness test.[1] Thus, business regulations can be less precise than other forms of legislation and not be unconstitutionally vague on due process grounds because the entities affected by such regulations are more apt to know where the lines are drawn and more able to obtain clarification through inquiry or administrative proceedings.[2] Also, the subject matter is often more narrow, and businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action.[3]

Where a profession-specific regulation affords sufficient indicia of its meaning and application to those of ordinary intelligence in the profession, it is not subject to invalidation under the Due Process Clause on vagueness grounds.[4]

Footnotes

1 U.S.—Commack Self-Service Kosher Meats, Inc. v. Hooker, 680 F.3d 194 (2d Cir. 2012).
Less stringent vagueness analysis applied and more flexibility allowed if law merely regulates business activity
Ark.—Abraham v. Beck, 2015 Ark. 80, 456 S.W.3d 744 (2015).
Enhanced test for constitutionally protected rights
U.S.—Hayes v. New York Attorney Grievance Committee of the Eight Judicial Dist., 672 F.3d 158 (2d Cir. 2012).

2 Ill.—City of Chicago v. Pooh Bah Enterprises, Inc., 224 Ill. 2d 390, 309 Ill. Dec. 770, 865 N.E.2d 133 (2006).
Businesses' right to know
Directors and officers of corporations have a significant right to know what law will be applied to their actions, and stockholders have a right to know by what standards of accountability they may hold those managing the corporation's business and affairs.
Del.—VantagePoint Venture Partners 1996 v. Examen, Inc., 871 A.2d 1108 (Del. 2005).

3 Wyo.—Travelocity.com LP v. Wyoming Dept. of Revenue, 2014 WY 43, 329 P.3d 131 (Wyo. 2014).

4 U.S.—Gonzalez-Droz v. Gonzalez-Colon, 660 F.3d 1 (1st Cir. 2011).

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16D C.J.S. Constitutional Law § 2246

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2246. Abatement of nuisances

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4260 to 4297

The abatement of businesses which are nuisances is not a denial of due process.

The validity of provisions implementing the police power of the state to abate nuisances has been challenged on due process grounds and adjudicated with respect to various matters and conditions, including garbage disposition, junk yards,[1] water pollution,[2] explosives[3] fireworks,[4] animals,[5] and unsupervised car wash facilities.[6] Also, adjudications have been made with respect to businesses that provide sexually explicit materials[7] or allow sexually explicit activity.[8]

Footnotes

1 Tex.—Friesenhahn v. City of New Braunfels, 426 S.W.2d 566 (Tex. Civ. App. Austin 1968).

2 W. Va.—City of Huntington v. State Water Commission, 137 W. Va. 786, 73 S.E.2d 833 (1953).

3 U.S.—Southern Blasting Services, Inc. v. Wilkes County, NC, 288 F.3d 584 (4th Cir. 2002); Southern Blasting Services, Inc. v. Wilkes County, N.C., 162 F. Supp. 2d 455 (W.D. N.C. 2001), judgment aff'd, 288

F.3d 584 (4th Cir. 2002); Cohen v. Bredehoeft, 290 F. Supp. 1001 (S.D. Tex. 1968), judgment aff'd, 402 F.2d 61 (5th Cir. 1968).

4 U.S.—PPC Enterprises, Inc. v. Texas City, Texas, 76 F. Supp. 2d 750 (S.D. Tex. 1999); Cohen v. Bredehoeft, 290 F. Supp. 1001 (S.D. Tex. 1968), judgment aff'd, 402 F.2d 61 (5th Cir. 1968).

5 U.S.—Dias v. City and County of Denver, 567 F.3d 1169 (10th Cir. 2009) (ban on pit bulls).

6 La.—Guillot v. Town of Lutcher, 373 So. 2d 1385, 4 A.L.R.4th 1302 (La. Ct. App. 4th Cir. 1979), writ denied, 377 So. 2d 119 (La. 1979).

7 U.S.—Doctor John's, Inc. v. City of Roy, 465 F.3d 1150 (10th Cir. 2006).

S.C.—Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000) (businesses providing nonobscene, sexually explicit material are entitled to due process protection).

8 U.S.—Recreational Developments of Phoenix, Inc. v. City of Phoenix, 83 F. Supp. 2d 1072 (D. Ariz. 1999), aff'd, 238 F.3d 430 (9th Cir. 2000) (clubs in which members were permitted to engage in sex acts with each other or observe other members engaging in sex acts).

As to the regulation of sexually explicit establishments and the sale of alcohol, see § 2265.

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2247. Business hours or days

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4263, 4267 to 4297

Due process of law is not denied by the reasonable regulation of business hours.

Constitutional due process guaranties are not violated by state prohibitions on the doing of business at such hours as are injurious to the public comfort, morals, or safety,[1] and various restrictions on the time of doing business have been upheld, as against challenges based on due process grounds, with respect to such businesses as car wash facilities,[2] massage parlors,[3] payday loan businesses,[4] and sellers of food[5] and alcoholic beverages.[6]

Footnotes

1 Mich.—People v. Raub, 9 Mich. App. 114, 155 N.W.2d 878 (1967).
N.J.—Amodio v. Board of Com'rs of Town of West New York, 133 N.J.L. 220, 43 A.2d 889 (N.J. Sup. Ct. 1945).
Wis.—State v. Potokar, 245 Wis. 460, 15 N.W.2d 158 (1944).

Memorial Day and Independence Day hours

N.Y.—S. E. Nichols Herkimer Corp. v. Village of Herkimer, 38 A.D.2d 456, 330 N.Y.S.2d 747 (4th Dep't 1972).

2 Mich.—People v. Raub, 9 Mich. App. 114, 155 N.W.2d 878 (1967).

3 Iowa—MRM, Inc. v. City of Davenport, 290 N.W.2d 338 (Iowa 1980).

4 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 339 F. Supp. 2d 1058 (W.D. Wis. 2004).

5 Mass.—Jewel Companies, Inc. v. Town of Burlington, 365 Mass. 274, 311 N.E.2d 539 (1974).

Restaurant hours

Vt.—City of Burlington v. Jay Lee Inc., 130 Vt. 212, 290 A.2d 23, 53 A.L.R.3d 936 (1972).

6 U.S.—Patch Enterprises, Inc. v. McCall, 447 F. Supp. 1075 (M.D. Fla. 1978).

Fla.—City of Pompano Beach v. Big Daddy's, Inc., 375 So. 2d 281 (Fla. 1979).

Bottle clubs' hours of operation

N.H.—State v. Lambert, 119 N.H. 881, 409 A.2d 794 (1979).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2248. Business hours or days—Sunday "blue laws"

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4263, 4267 to 4297

"Blue law" provisions requiring the closing of businesses on Sundays generally do not violate due process.

Sunday business closing laws have generally been upheld against challenges based on due process grounds[1] as a valid exercise of the police power[2] in the interest of the health, recreation, and welfare of the working population.[3] Thus, provisions which require the closing on Sunday of particular businesses, such as grocery stores,[4] motor vehicle dealers,[5] or places of amusement,[6] or which prohibit the sale of intoxicating beverages on Sunday,[7] have been upheld as not violative of constitutional due process protections.

Legislation forbidding the keeping open of stores generally on Sunday is not rendered unreasonable or void by reason of its exemption of places of business ministering to the common necessities of the people[8] or because it contains territorial classifications.[9] However, Sunday laws have been invalidated on due process grounds where they contain unreasonable discriminations[10] or where they are too vague to be sufficiently intelligible.[11]

Footnotes

1 U.S.—Discount Records, Inc. v. City of North Little Rock, 671 F.2d 1220 (8th Cir. 1982).
N.C.—S. S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).
Vt.—State v. Gilfel of Rutland, Inc., 128 Vt. 595, 270 A.2d 153 (1970).
Consecutive Saturday and Sunday sales prohibited
Tex.—S. S. Kresge Co. v. State, 546 S.W.2d 928 (Tex. Civ. App. Dallas 1977), writ refused n.r.e., (June 29, 1977).

2 Conn.—State v. Gorra Bros., Inc., 4 Conn. Cir. Ct. 488, 236 A.2d 345 (App. Div. 1967).

3 La.—State v. Scallon, 374 So. 2d 1232 (La. 1979).

4 Neb.—City of Omaha v. Lewis & Smith Drug Co., 156 Neb. 650, 57 N.W.2d 269 (1953).

5 U.S.—Kittery Motorcycle, Inc. v. Rowe, 201 F. Supp. 2d 189 (D. Me. 2002), judgment aff'd, 320 F.3d 42 (1st Cir. 2003).
Mobile homes
U.S.—Hames Mobile Homes, Inc. v. Sellers, 343 F. Supp. 12 (N.D. Iowa 1972).

6 N.C.—State v. McGee, 237 N.C. 633, 75 S.E.2d 783 (1953).

7 Fla.—Wednesday Night, Inc. v. City of Fort Lauderdale, 272 So. 2d 502 (Fla. 1972).
As to intoxicating beverages, generally, see § 2265.

8 N.D.—State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D. 1966).
R.I.—City of Warwick v. Almac's, Inc., 442 A.2d 1265 (R.I. 1982).
Wide discretion allowed
Miss.—Genesco, Inc. v. J. C. Penney Co., Inc., 313 So. 2d 20 (Miss. 1975).

9 Md.—Supermarkets General Corp. v. State, 286 Md. 611, 409 A.2d 250 (1979).

10 Conn.—Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979).
Ga.—Hughes v. Reynolds, 223 Ga. 727, 157 S.E.2d 746 (1967).

11 Ark.—Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982).
Md.—Hechinger Co. v. State's Attorney for Prince George's County, 272 Md. 706, 326 A.2d 742 (1974).

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XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2249. Geographic restrictions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4092, 4093, 4267 to 4297

Geographic restrictions on the operation of a business may be imposed without violating due process.

States may impose geographic restrictions on the operation of a business without violating due process.[1] Accordingly, constitutional due process guaranties are not violated by location restrictions on adult motion pictures theaters,[2] and peddling.[3] However, an ordinance prohibiting door-to-door or on-street solicitation of contributions by charitable organizations not using at least 75% of their receipts for "charitable purposes" is unconstitutionally overbroad and cannot be justified on the basis that such limitation is intimately related to the substantial governmental interests in preventing fraud and protecting public safety and residential privacy.[4]

Footnotes

1 Cal.—Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).

2 Wash.—Northend Cinema, Inc. v. City of Seattle, 90 Wash. 2d 709, 585 P.2d 1153, 1 A.L.R.4th 1284 (1978).

3 U.S.—Breard v. City of Alexandria, La., 341 U.S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 62 Ohio L. Abs. 210, 35 A.L.R.2d 335 (1951) (abrogated on other grounds by, Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980)).

Idaho—Rowe v. City of Pocatello, 70 Idaho 343, 218 P.2d 695 (1950).

La.—City of Alexandria v. Jones, 216 La. 923, 45 So. 2d 79 (1950).

Or.—Phillips v. City of Bend, 192 Or. 143, 234 P.2d 572 (1951).

Advertising distribution

U.S.—Ad-Express, Inc. v. Kirvin, 516 F.2d 195 (2d Cir. 1975).

Newspapers excepted

U.S.—Perry v. City of Chicago, 480 F. Supp. 498 (N.D. Ill. 1979).

4 U.S.—Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980).

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XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

1. In General

§ 2250. Antitrust and unfair competition regulation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4265, 4267 to 4297

State legislation designed to encourage competition has been upheld as not being violative of constitutional due process guaranties.

State legislation designed to encourage competition has been upheld as not being violative of constitutional due process guaranties.[1] Accordingly, constitutional due process guaranties have been found not to be infringed by state laws prohibiting producers and refiners of petroleum products from owning retail service stations.[2]

Also, legislation designed to proscribe unfair trade practices has not been invalidated as violative of due process on the basis of allegations that it is too vague and indefinite,[3] inasmuch as the phrase "unfair methods of competition" has a sufficiently well-established meaning in common law and in federal trade law to meet such a constitutional challenge.[4]

However, a legislative grant of power to, in effect, restrict competition and encourage the creation of a monopoly may be invalidated as a deprivation of liberty in violation of constitutional due process guaranties.[5]

Footnotes

1 U.S.—McCurry v. Alcoholic Beverage Control Div. of Arkansas, 4 F. Supp. 3d 1043 (E.D. Ark. 2014) (applying Arkansas law prohibiting companies or people from profiting from more than one permit to sell liquor).

Wash.—State v. Reader's Digest Ass'n, Inc., 81 Wash. 2d 259, 501 P.2d 290 (1972) (holding modified on other grounds by, Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash. 2d 778, 719 P.2d 531 (1986)).

2 U.S.—Continental Oil Co. v. Governor of Maryland, 439 U.S. 884, 99 S. Ct. 233, 58 L. Ed. 2d 200 (1978).

Del.—Atlantic Richfield Co. v. Tribbitt, 399 A.2d 535 (Del. Ch. 1977).

Md.—Governor of Maryland v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977), judgment aff'd, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978).

N.H.—Opinion of the Justices, 117 N.H. 533, 376 A.2d 118 (1977).

3 Fla.—Department of Legal Affairs v. Rogers, 329 So. 2d 257 (Fla. 1976).

Wash.—State v. Reader's Digest Ass'n, Inc., 81 Wash. 2d 259, 501 P.2d 290 (1972) (holding modified on other grounds by, Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash. 2d 778, 719 P.2d 531 (1986)).

Unfair cigarette sales act

U.S.—Oil Well Co. v. Alabama State Dept. of Revenue, 350 F. Supp. 416 (M.D. Ala. 1971), judgment aff'd, 468 F.2d 1398 (5th Cir. 1972).

4 Wash.—State v. Ralph Williams' North West Chrysler Plymouth, Inc., 82 Wash. 2d 265, 510 P.2d 233, 59 A.L.R.3d 1209 (1973).

5 N.C.—In re Certificate of Need for Aston Park Hospital, Inc., 282 N.C. 542, 193 S.E.2d 729, 61 A.L.R.3d 268 (1973).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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K. Trade, Business, or Profession

1. In General

§ 2251. Intellectual property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4301 to 4304

In order to be constitutional under substantive due process, the business regulation of intellectual property must be rationally related to a legitimate legislative purpose.

Copyrights,[1] patents,[2] and trademarks[3] are all property interests protected under the Due Process Clause. As with other regulation of business,[4] legislative action relating to intellectual property, in order to be constitutional under substantive due process, must be rationally related to a legitimate legislative purpose.[5]

Footnotes

1 U.S.—National Ass'n of Boards of Pharmacy v. Board of Regents of the University System of Georgia, 633 F.3d 1297, 265 Ed. Law Rep. 473 (11th Cir. 2011).

2 U.S.—Abbott Laboratories v. Cordis Corp., 710 F.3d 1318 (Fed. Cir. 2013).

3 U.S.—Ford Motor Co. v. Greatdomains.Com, Inc., 177 F. Supp. 2d 628 (E.D. Mich. 2001).

4 § 2241.

5 U.S.—Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dept. of Treasury, 638 F.3d 794 (D.C. Cir. 2011) (a federal statute, which eliminated the ability of Cuban companies to register or renew certain trademarks, was rationally related to the legitimate government goals of isolating Cuba's Communist government and hastening a transition to democracy in Cuba, and, therefore, satisfied the substantive due process test); Cloverleaf Golf Course, Inc. v. FMC Corp., 863 F. Supp. 2d 768 (S.D. Ill. 2012) (an amendment to a statute creating claims for false patent marking, that permitted such claims to be brought only by the United States, was rationally related to the legitimate legislative purpose of eliminating frivolous qui tam lawsuits, and thus, its retroactive application did not violate the Due Process Clause).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2252. Advertising

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4267 to 4297

Depending on the circumstances, the regulation of advertising may or may not be violative of due process.

A prohibition on advertising, in particular cases, may constitute a deprivation of property without due process of law.[1] Due process is not denied, however, by prohibitions on the advertisement of particular products in order to prevent deception[2] or by prohibitions on the advertisement of particular products by electronic media without prohibiting the advertising of the same products by print media.[3]

The propriety of advertising regulations, under constitutional due process, has also been adjudicated with respect to particular occupations, such as attorneys,[4] marriage counselors[5] and interior designers,[6] or particular products, including eyeglasses[7] and gasoline.[8]

Billboard advertising may be regulated, in conformity with due process of law,[9] including the location of billboards.[10]

Drug price advertising prohibitions have been held to violate the Due Process Clause of the Fourteenth Amendment,[11] but there is authority to the contrary.[12]

A federal prohibition of advertisements with respect to the sale or rental of housing which indicate any preferences based on race, color, religion, sex, or national origin is not violative of the Due Process Clause of the Fifth Amendment,[13] and local regulations of real estate advertising have been held not to deprive real estate brokers of property without due process of law.[14]

The prohibition of public utility advertising on the basis of an energy conservation rationale is unconstitutional.[15]

Footnotes

1 Mich.—Levy v. City of Pontiac, 331 Mich. 100, 49 N.W.2d 80 (1951).
Nev.—State v. Redman Petroleum Corp., 77 Nev. 163, 360 P.2d 842 (1961).
Pa.—Gambone v. Com., 375 Pa. 547, 101 A.2d 634 (1954).

2 Wis.—State v. Amoco Oil Co., 97 Wis. 2d 226, 293 N.W.2d 487 (1980) (a statute, which prohibited the selling or furnishing of property or services combined with or conditioned on the purchase of other property or services without setting forth the total price to be paid, bore a rational relation to the constitutionally permissible objective of regulating business to prevent deception, and, thus, did not deny due process).

3 U.S.—Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582 (D.D.C. 1971), judgment aff'd, 405 U.S. 1000, 92 S. Ct. 1289, 31 L. Ed. 2d 472 (1972) and judgment aff'd, 405 U.S. 1000, 92 S. Ct. 1290, 31 L. Ed. 2d 472 (1972) (there exists a rational basis for placing a ban on cigarette advertisements on broadcast facilities while allowing such advertisements in print, and a statute prohibiting cigarette advertising in electronic media does not violate due process).

4 Wis.—In re Disciplinary Proceedings against Hupy, 2011 WI 38, 333 Wis. 2d 612, 799 N.W.2d 732 (2011).
Unconstitutionally vague
U.S.—Hayes v. New York Attorney Grievance Committee of the Eight Judicial Dist., 672 F.3d 158 (2d Cir. 2012) (New York disciplinary rule regarding the required disclosure of specialty certifications of attorneys); Harrell v. Florida Bar, 915 F. Supp. 2d 1285 (M.D. Fla. 2011) (construing Florida bar rule).
As to the regulation of attorneys and due process protections, generally, see § 2253.

5 Utah—Magleby v. State, By and Through Dept. of Business Regulations and Dept. of Registration, 564 P.2d 1109 (Utah 1977).

6 U.S.—Roberts v. Farrell, 630 F. Supp. 2d 242 (D. Conn. 2009) (addressing Connecticut law).

7 U.S.—Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955).

8 Del.—State v. Hobson, 46 Del. 381, 83 A.2d 846 (1951).
Mass.—Merit Oil Co. v. Director of Division of Necessaries of Life, 319 Mass. 301, 65 N.E.2d 529 (1946) (rejected on other grounds by, State v. Redman Petroleum Corp., 77 Nev. 163, 360 P.2d 842 (1961)).

9 Wash.—Markham Advertising Co. v. State, 73 Wash. 2d 405, 439 P.2d 248 (1968).
Safety, esthetics, and economic welfare served
U.S.—E. B. Elliott Adv. Co. v. Metropolitan Dade County, State of Fla., 294 F. Supp. 412 (S.D. Fla. 1968), judgment aff'd, 425 F.2d 1141 (5th Cir. 1970).

10 Cal.—People ex rel. Dept. Pub. Wks. v. Adco Advertisers, 35 Cal. App. 3d 507, 110 Cal. Rptr. 849 (3d Dist. 1973).
N.Y.—Rochester Poster Advertising Co., Inc. v. Town of Brighton, 49 A.D.2d 273, 374 N.Y.S.2d 510 (4th Dep't 1975).

11 Md.—Maryland Bd. of Pharmacy v. Sav-A-Lot, Inc., 270 Md. 103, 311 A.2d 242 (1973).
Tex.—Texas State Bd. of Pharmacy v. Gibson's Discount Center, Inc., 541 S.W.2d 884 (Tex. Civ. App. Austin 1976), writ refused n.r.e., (Mar. 9, 1977).
As to the regulation of drugs and medical devices, generally, see § 2254.

12 N.Y.—Urowsky v. Board of Regents of University of New York, 38 N.Y.2d 364, 379 N.Y.S.2d 815, 342 N.E.2d 583 (1975).

13 U.S.—U.S. v. Hunter, 459 F.2d 205, 22 A.L.R. Fed. 339 (4th Cir. 1972), referring to 42 U.S.C.A. § 3604(c).

14 Mo.—Howe v. City of St. Louis, 512 S.W.2d 127 (Mo. 1974).

"For sale" signs prohibition

U.S.—DeKalb Real Estate Bd., Inc. v. Chairman and Bd. of Commissioners of Roads and Revenues for DeKalb County, Georgia, 372 F. Supp. 748 (N.D. Ga. 1973).

15 U.S.—Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2253. Attorneys; nonattorney legal practitioners

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4273(1) to 4273(3)

Various regulations pertaining to attorneys have been upheld as not violative of due process.

In general, an attorney has a Fourteenth Amendment right to practice his or her profession without unreasonable government interference.[1] However, due process of law is not violated by provisions which require attorneys to produce financial records for a state bar committee,[2] continue their legal education,[3] and represent indigents[4] without compensation[5] or for less than full compensation,[6] although there is case law holding that a private attorney may not be compelled to represent an indigent criminal defendant without just compensation.[7]

Due process is not violated by provisions which prohibit attorneys from soliciting personal injury claims,[8] paying witness fees contingent upon the outcome of a case,[9] generally engaging in professional misconduct,[10] or, more specifically, engaging in a conflict of interest with a client.[11] Nor is due process violated by statutes limiting the amount of fees an attorney may obtain in a medical malpractice action where representation is on a contingency fee basis.[12] Even where there is a statute leaving the measure of compensation of attorneys in workers' compensation cases to the attorney-client agreement, unless restrained by

law, an administrative rule may require that an attorney show that the attorney's services operated to secure the fund from which the attorney seeks a fee in a workers' compensation case.[13]

For purposes of admission to a bar, an applicant is not deprived of a substantive due process right where he or she is required to submit examination materials by a certain time.[14] In addition, an attorney does not have a due process right to pro hac vice status.[15] Due process is also not violated where an attorney is denied recertification as a specialist.[16]

Due process is not violated by provisions which authorize disciplinary actions against attorneys,[17] including actions for reprimand, suspension, or disbarment,[18] and collection of the cost of the disbarment proceeding.[19] Due process requires fair notice of the proscribed conduct, meaning that attorneys may not be subject to disciplinary rules that are so broad that they implicate concerns about potential random application or unclear meaning, i.e., rules that are unconstitutionally vague.[20] The guiding principle in examining whether an attorney disciplinary rule is unconstitutionally vague is whether a reasonable attorney would have been put on notice that his or her conduct was proscribed.[21]

Nonattorney legal practitioners.

A statute requiring bankruptcy petition preparers to include their Social Security numbers on all documents filed with the bankruptcy court does not violate the preparer's substantive due process rights.[22]

A county's unwritten policy of prohibiting paralegals with felony convictions from obtaining privileged access to prison does not violate the paralegals' due process rights.[23]

Footnotes

1 U.S.—Conn v. Gabbert, 526 U.S. 286, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999); Bright v. Gallia County, Ohio, 753 F.3d 639 (6th Cir. 2014), cert. denied, 135 S. Ct. 1561 (2015).

2 Del.—In re Kennedy, 442 A.2d 79 (Del. 1982).

3 U.S.—Verner v. State of Colo., 533 F. Supp. 1109 (D. Colo. 1982), judgment aff'd, 716 F.2d 1352 (10th Cir. 1983).

4 Mich.—People v. Hutchinson, 38 Mich. App. 138, 195 N.W.2d 787 (1972).
Obligation imposed by ancient traditions
Ariz.—Johnson v. Board of Sup'rs of Pima County, 4 Ariz. App. 33, 417 P.2d 546 (1966).

5 La.—State v. Doucet, 352 So. 2d 222 (La. 1977).

6 Del.—Lindh v. O'Hara, 325 A.2d 84 (Del. 1974).
State payment for federal court services denied
N.C.—State v. Davis, 270 N.C. 1, 153 S.E.2d 749 (1967).

7 Alaska—DeLisio v. Alaska Superior Court, 740 P.2d 437 (Alaska 1987).
Oppressive imposition unacceptable
W. Va.—State ex rel. Partain v. Oakley, 159 W. Va. 805, 227 S.E.2d 314 (1976).

8 Mich.—Woll v. Kelley, 80 Mich. App. 721, 265 N.W.2d 23 (1978).
As to attorney advertising and due process, see § 2252.

9 U.S.—Person v. Association of Bar of City of New York, 554 F.2d 534 (2d Cir. 1977).

10 Tex.—Howell v. State, 559 S.W.2d 432 (Tex. Civ. App. Tyler 1977), writ refused n.r.e., (May 17, 1978).
Canons of professional responsibility not vague
Iowa—Matter of Frerichs, 238 N.W.2d 764 (Iowa 1976).

11 Cal.—Ames v. State Bar, 8 Cal. 3d 910, 106 Cal. Rptr. 489, 506 P.2d 625 (1973).
Ohio—Dayton Bar Assn. v. Parisi, 131 Ohio St. 3d 345, 2012-Ohio-879, 965 N.E.2d 268 (2012).

12 Cal.—Roa v. Lodi Medical Group, Inc., 37 Cal. 3d 920, 211 Cal. Rptr. 77, 695 P.2d 164 (1985).

13 Idaho—Seiniger Law Offices, P.A. v. State ex rel. Indus. Com'n, 154 Idaho 461, 299 P.3d 773 (2013).

14 Utah—McBride v. Utah State Bar, 2010 UT 60, 242 P.3d 769 (Utah 2010) (the deadline was rationally related the bar's interests in the efficient administration of the exam and preventing cheating).

15 U.S.—Belue v. Leventhal, 640 F.3d 567 (4th Cir. 2011).

16 U.S.—Doe v. Florida Bar, 630 F.3d 1336 (11th Cir. 2011).

17 Alaska—In re MacKay, 416 P.2d 823 (Alaska 1964).

Ga.—Cushway v. State Bar, 120 Ga. App. 371, 170 S.E.2d 732 (1969).

Wis.—In re Disciplinary Proceedings Against Siderits, 2013 WI 2, 345 Wis. 2d 89, 824 N.W.2d 812 (2013).

Disqualification due to emotional or mental instability

A disciplinary rule which in effect declares that the practice of law by one affected by disqualifying emotional or mental instability is constructive misconduct, subjecting the practitioner to disciplinary action, is not so vague and indefinite as to deprive an attorney of due process, where use of the phrase "in the judgment of ordinary men" signifies that in deciding whether disqualifying instability exists, the standards of the perfectionist and of the indifferent are to be avoided, and that of a person of ordinary tolerance for the imperfections of others is to be applied.

S.C.—In re Chipley, 254 S.C. 588, 176 S.E.2d 412, 50 A.L.R.3d 1253 (1970).

18 Tex.—Steere v. State Bar of Tex., 464 S.W.2d 732 (Tex. Civ. App. Houston 1st Dist. 1971), writ dismissed, (May 19, 1971).

19 U.S.—Gadda v. State Bar of Cal., 511 F.3d 933 (9th Cir. 2007) (construing California statute).

20 Mass.—In re Crossen, 450 Mass. 533, 880 N.E.2d 352 (2008).

As to vagueness within the application of due process, see § 2245.

21 Mass.—In re Crossen, 450 Mass. 533, 880 N.E.2d 352 (2008) (a disciplinary rule prohibiting conduct prejudicial to the administration of justice was not unconstitutionally vague).

22 U.S.—In re Crawford, 194 F.3d 954 (9th Cir. 1999).

23 U.S.—Hicks v. Erie County, New York, 65 Fed. Appx. 746 (2d Cir. 2003).

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16D C.J.S. Constitutional Law § 2254

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2254. Drugs, drug paraphernalia, vitamins, and medical devices

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4330

The business regulation of the sale of drugs and medical devices does not deny due process of law.

Various regulatory measures pertaining to drugs and medical devices have withstood challenges based on due process grounds, including measures which preclude the trafficking of dangerous drugs[1] in conformity with federal designations[2] and require sellers of controlled substances to report suspicious transactions.[3]

Measures which have been upheld as not violative of due process of law also include prohibitions of abuses in the dispensing of hearing aids[4] and prescription drugs,[5] pharmacy operation[6] and sales of drugs[7] and vitamins[8] by persons who are not pharmacists, false claims and misrepresentations related to drugs,[9] and the sale of drug paraphernalia.[10]

Footnotes

1 Or.—State v. Sargent, 252 Or. 579, 449 P.2d 845 (1969).

2 Ala.—McCurley v. State, 390 So. 2d 15 (Ala. Crim. App. 1980), aff'd in part, rev'd in part on other grounds, 390 So. 2d 25 (Ala. 1980).

3 Ark.—Landmark Novelties, Inc. v. Arkansas State Bd. of Pharmacy, 2010 Ark. 40, 358 S.W.3d 890 (2010).

4 N.J.—New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 384 A.2d 795 (1978).

Purchase cancellation

Me.—National Hearing Aid Centers, Inc. v. Smith, 376 A.2d 456, 96 A.L.R.3d 1020 (Me. 1977).

5 Ark.—Abraham v. Beck, 2015 Ark. 80, 456 S.W.3d 744 (2015) (physician).

6 U.S.—North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 94 S. Ct. 407, 38 L. Ed. 2d 379 (1973).

7 Wis.—State v. Wakeen, 263 Wis. 401, 57 N.W.2d 364 (1953).

Due process violations

The Drug Enforcement Administration (DEA) violated the liberty interest in the continued conduct of business, violating the due process rights of a manufacturer of over-the-counter drugs, when DEA employees stated hypothetically that the DEA would not approve the importation of chemical ephedrine if the manufacturer was listed in the application as a domestic customer, where the effect of the action was to cause domestic sellers of ephedrine, which were not directly barred from selling to the manufacturer, to refrain from doing so out of concern that the manufacturer was involved in the illicit diversion of ephedrine for methamphetamine manufacture, which might implicate them under another statute. Moreover, the DEA violated the Due Process Clause by curtailing the liberty right to continue in business, asserted by a domestic customer for a chemical on a list of chemicals requiring DEA import approval, when it denied the request of the importer, proposing to sell the chemical to the customer, for the issuance of a letter-of-non-objection to importation and declined the request of the customer to issue an order suspending importation that would trigger a hearing on the import denial.

U.S.—PDK Labs Inc. v. Ashcroft, 338 F. Supp. 2d 1 (D.D.C. 2004).

As to regulation of advertising of drug prices, see § 2252.

8 Minn.—Culver v. Nelson, 237 Minn. 65, 54 N.W.2d 7 (1952).

9 U.S.—Seven Cases v. U.S., 239 U.S. 510, 36 S. Ct. 190, 60 L. Ed. 411 (1916).

S.C.—State ex. rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., 2015 WL 775094 (S.C. 2015).

Cancer "cures"

Cal.—People v. Galway, 120 Cal. App. 2d 45, 260 P.2d 212 (4th Dist. 1953).

10 U.S.—Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982).

Drug abuse relationship

U.S.—Mid-Atlantic Accessories Trade Ass'n v. State of Md., 500 F. Supp. 834 (D. Md. 1980).

Minors' exposure

Cal.—Music Plus Four, Inc. v. Barnet, 114 Cal. App. 3d 113, 170 Cal. Rptr. 419 (4th Dist. 1980).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2255. Financial institutions, transactions, and services

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4282

The reasonable business regulation of financial institutions does not violate due process.

Financial institution regulations have been generally sustained as against challenges on due process grounds with respect to such matters as the issuance of charters[1] and certificates of authority;[2] officer appointment,[3] suspension,[4] removal,[5] or permanent bar;[6] and the licensing of financial institution employees.[7]

Bank regulation has also been sustained as against challenges on due process grounds with respect to bank liquidation[8] and reorganization,[9] as well as to receiverships[10] and conservators.[11]

CUMULATIVE SUPPLEMENT

Cases:

Federal Deposit Insurance Corporation (FDIC) did not conduct biased investigation which violated bank's due process rights; even if FDIC examiners' comments and examination protocol showed bias, and although FDIC Board of Directors decided that bank had violated Bank Secrecy Act (BSA), examiners' function was exclusively fact-finding, bank participated in ALJ hearing during which it could have cross-examined the allegedly biased examiners, and FDIC board reviewed ALJ's findings before issuing decision. U.S. Const. Amend. 5; 31 U.S.C.A. §§ 5311–5330. California Pacific Bank v. Federal Deposit Insurance Corporation, 885 F.3d 560 (9th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 N.J.—Application of Peoples Bank of Ridgewood, 109 N.J. Super. 149, 262 A.2d 709 (App. Div. 1970).
S.C.—Floyd v. Thornton, 220 S.C. 414, 68 S.E.2d 334 (1951).
Tex.—Lewis v. Metropolitan Sav. and Loan Ass'n, 550 S.W.2d 11 (Tex. 1977).

2 Fla.—Bay Nat. Bank & Trust Co. v. Dickinson, 229 So. 2d 302 (Fla. 1st DCA 1969).
La.—First Nat. Bank of Abbeville v. Sehrt, 246 So. 2d 382 (La. Ct. App. 1st Cir. 1971), writ refused, 258 La. 909, 248 So. 2d 334 (1971).
Incorporation requirement
Ga.—Jackson v. Long, 225 Ga. 227, 167 S.E.2d 583 (1969).

3 Mich.—Little v. American State Bank of Dearborn, 263 Mich. 645, 249 N.W. 22 (1933).
Nepotism prohibition
N.Y.—Hasenbein v. Siebert, 56 N.Y.2d 853, 453 N.Y.S.2d 171, 438 N.E.2d 877 (1982).

4 U.S.—Federal Deposit Ins. Corp. v. Mallen, 486 U.S. 230, 108 S. Ct. 1780, 100 L. Ed. 2d 265 (1988).

5 U.S.—Roslindale Co-op. Bank v. Greenwald, 481 F. Supp. 749 (D. Mass. 1979), aff'd, 627 F.2d 1087 (1st Cir. 1980) and judgment aff'd, 638 F.2d 258 (1st Cir. 1981).

6 U.S.—Cousin v. Office of Thrift Supervision, 73 F.3d 1242 (2d Cir. 1996).

7 Mo.—Garozzo v. Missouri Dept. of Ins., Financial Institutions & Professional Registration, Div. of Finance, 389 S.W.3d 660 (Mo. 2013) (due process was not violated by the denial of a mortgage loan originator license to an applicant who had been convicted of or pleaded guilty to a felony).

8 Mich.—Robinson v. People's Bank of Leslie, 266 Mich. 178, 253 N.W. 259, 92 A.L.R. 1251 (1934).
Minn.—American State Bank v. Jones, 184 Minn. 498, 239 N.W. 144, 78 A.L.R. 770 (1931).
S.C.—Zimmerman v. Central Union Bank, 194 S.C. 518, 8 S.E.2d 359 (1940).
Federal intervention
U.S.—Fidelity Sav. and Loan Ass'n v. Federal Home Loan Bank Bd., 689 F.2d 803 (9th Cir. 1982).

9 Iowa—Timmons v. Security Sav. Bank of Marshalltown, 221 Iowa 102, 264 N.W. 708 (1936).
N.Y.—Miller v. National Chautauqua County Bank of Jamestown, 240 A.D. 169, 270 N.Y.S. 522 (4th Dep't 1934).
Purchase of assets
U.S.—Federal Deposit Ins. Corp. v. Vineyard, 346 F. Supp. 489 (N.D. Tex. 1972).

10 U.S.—First Sav. & Loan Ass'n v. First Federal Sav. & Loan Ass'n of Hawaii, 547 F. Supp. 988 (D. Haw. 1982).
Availability of judicial review required
U.S.—Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc., 629 F.2d 951 (4th Cir. 1980).

11 U.S.—First Nat. Bank & Trust, Wibaux, Mont. v. Department of Treasury, Comptroller of Currency, 63 F.3d 894 (9th Cir. 1995).

16D C.J.S. Constitutional Law § 2256

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2256. Food and agricultural products

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4269, 4283

The reasonable business regulation of food and agricultural products does not violate due process.

Constitutional due process guaranties are not infringed by reasonable regulations, for the protection of the public, pertaining to agricultural products and food.[1]

The constitutionality of regulations pertaining to agricultural products and food has been upheld as against challenges based on due process grounds with respect to such matters as inspections of food manufacturing plants,[2] inspections of restaurants,[3] mandatory payments into a buyout fund for tobacco growers,[4] and with respect to such products as kosher food,[5] sweetening agents,[6] hemp,[7] and dairy products.[8]

Agricultural production and marketing regulation has been upheld as against challenges based on due process grounds with respect to such matters as price fixing,[9] price supports,[10] growing and marketing quotas,[11] marketing orders,[12] and unfair trade conduct.[13]

Footnotes

1 Ark.—Terry Dairy Products Co. v. Beard, 214 Ark. 440, 216 S.W.2d 860 (1949).
Fla.—Mayo v. Bossenbury, 152 Fla. 16, 10 So. 2d 725 (1942).
Ill.—Charles v. City of Chicago, 413 Ill. 428, 109 N.E.2d 790 (1952).

2 Va.—Parker v. Com., 42 Va. App. 358, 592 S.E.2d 358 (2004), judgment aff'd, 269 Va. 174, 608 S.E.2d 925 (2005).

3 U.S.—Camuglia v. The City of Albuquerque, 448 F.3d 1214 (10th Cir. 2006).

4 U.S.—Swisher Intern., Inc. v. Schafer, 550 F.3d 1046 (11th Cir. 2008).

5 U.S.—Commack Self-Service Kosher Meats, Inc. v. Hooker, 680 F.3d 194 (2d Cir. 2012).

6 Pa.—Cott Beverage Corp. v. Horst, 380 Pa. 113, 110 A.2d 405 (1955).

7 U.S.—U.S. v. White Plume, 447 F.3d 1067 (8th Cir. 2006).

8 Ala.—Alabama Dairy Commission v. Food Giant, Inc., 357 So. 2d 139 (Ala. 1978).
N.J.—Garden State Farms, Inc. v. Mathis, 61 N.J. 406, 294 A.2d 713 (1972).
Milk composition standards and pricing and pooling laws not violative of due process
U.S.—Shamrock Farms Co. v. Veneman, 146 F.3d 1177 (9th Cir. 1998).
Types of containers
A statute banning the retail sale of milk in plastic nonreturnable, nonrefillable containers but permitting such sale in other nonreturnable, nonrefillable containers, such as paperboard cartons, does not violate substantive due process.
U.S.—Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

9 U.S.—Prune Bargaining Ass'n v. Butz, 444 F. Supp. 785 (N.D. Cal. 1975), judgment aff'd, 571 F.2d 1132 (9th Cir. 1978).

10 U.S.—Hiatt Grain & Feed, Inc. v. Bergland, 446 F. Supp. 457 (D. Kan. 1978), judgment aff'd, 602 F.2d 929 (10th Cir. 1979).

11 U.S.—Price v. Block, 535 F. Supp. 1239 (E.D. N.C. 1982), aff'd, 685 F.2d 431 (4th Cir. 1982).

12 U.S.—Hettinga v. U.S., 677 F.3d 471 (D.C. Cir. 2012), cert. denied, 133 S. Ct. 860, 184 L. Ed. 2d 658 (2013).
Fla.—Joe Hatton, Inc. v. Conner, 240 So. 2d 145 (Fla. 1970).
N.Y.—Wickham v. Trapani, 26 A.D.2d 216, 272 N.Y.S.2d 6 (3d Dep't 1966).
Unreasonable classification invalidated
Where under a marketing order a new handler with less available grapefruit than an old handler was able to secure a larger prorate base because of a difference in the standards used to determine such bases, not only the provision of the order allowing the committee to use "any other factors" must fall but also the entire provision of the order relating to prorate bases must fall as violative of due process.
U.S.—Vaughn-Griffin Packing Co. v. Freeman, 294 F. Supp. 458 (M.D. Fla. 1968), judgment aff'd, 423 F.2d 1094 (5th Cir. 1970).

13 U.S.—George Steinberg & Son, Inc. v. Butz, 491 F.2d 988 (2d Cir. 1974); Butz v. Lawson Milk Co., Division Consol. Foods Corp., 386 F. Supp. 227 (N.D. Ohio 1974).

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16D C.J.S. Constitutional Law § 2257

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2257. Gambling and gaming

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4285

The regulation of gambling or gaming as a business does not generally violate due process.

The regulation of gambling falls within a state's core police power,[1] and thus, constitutional due process guaranties are generally not violated by the state's regulation of gambling,[2] including gambling conducted for charitable purposes[3] and its enforcement by criminal or civil sanctions.[4] Certain exclusions of nonprofit organizations from the operation of a state's gambling laws do not violate due process.[5]

Accordingly, regulations and prohibitions pertaining to gambling and gaming devices, such as slots,[6] pinball,[7] and video gaming machines,[8] as well as with respect to lotteries,[9] dog racing,[10] and the interstate transportation of gambling devices,[11] have generally withstood constitutional challenges based on due process grounds.

Footnotes

1 U.S.—Caesars Massachusetts Management Co., LLC v. Crosby, 778 F.3d 327 (1st Cir. 2015) (applying Massachusetts law).

2 U.S.—Holliday v. Governor of State of S.C., 78 F. Supp. 918 (W.D. S.C. 1948), judgment aff'd, 335 U.S. 803, 69 S. Ct. 56, 93 L. Ed. 360 (1948).

3 Alaska—Roberts v. State, Dept. of Revenue, 162 P.3d 1214 (Alaska 2007) (the issuance of a gaming permit to a nonprofit corporation, which used the gaming proceeds to fund a free bicycle program, did not violate a bicycle rental business owner's due process rights to gainful employment and to earn a living by allowing nonprofit entities to compete with his for-profit business).

Prohibiting bingo licensee from contracting out gaming sessions

Idaho—Sons & Daughters of Idaho, Inc. v. Idaho Lottery Com'n, 144 Idaho 23, 156 P.3d 524 (2007).

Premises not owned by charity

Fla.—Jordan Chapel Freewill Baptist Church v. Dade County, 334 So. 2d 661 (Fla. 3d DCA 1976).

Ga.—St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108 (1978).

4 Wash.—State v. Gedarro, 19 Wash. App. 826, 579 P.2d 949 (Div. 2 1978).

5 Fla.—Carroll v. State, 361 So. 2d 144 (Fla. 1978).

6 U.S.—Mills v. Agnew, 286 F. Supp. 107 (D. Md. 1968).

7 U.S.—Phillips v. City of Atlanta, 57 F. Supp. 588 (N.D. Ga. 1944), judgment aff'd, 145 F.2d 470 (C.C.A. 5th Cir. 1944).

N.Y.—Wnek Vending and Amusements, Inc. v. City of Buffalo, 96 Misc. 2d 983, 410 N.Y.S.2d 255 (Sup 1978).

8 S.C.—Johnson v. Collins Entertainment Co., Inc., 349 S.C. 613, 564 S.E.2d 653 (2002).

9 Kan.—Dissmeyer v. State, 292 Kan. 37, 249 P.3d 444 (2011).

N.Y.—Fujishima v. Games Management Services, 110 Misc. 2d 970, 443 N.Y.S.2d 323 (Sup 1981).

Bingo exception to ban on lotteries

A municipal ordinance implementing a narrow "bingo" exception to a state constitutional ban on lotteries gave a defendant sufficient notice of what constituted legal bingo in layperson's terms to satisfy the requirements of due process when the ordinance defined it as that game "commonly known as bingo."

Ala.—Barrett v. State, 705 So. 2d 529 (Ala. Crim. App. 1996).

10 La.—Louisiana Greyhound Club v. Clancy, 167 La. 511, 119 So. 532 (1928), aff'd, 280 U.S. 525, 50 S. Ct. 87, 74 L. Ed. 593 (1929).

Requirement of police presence at dog track

Mass.—Taunton Greyhound Ass'n, Inc. v. Town of Dighton, 373 Mass. 60, 364 N.E.2d 1234 (1977).

11 U.S.—U.S. v. 65 Slot Machines, 102 F. Supp. 922 (W.D. La. 1952).

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16D C.J.S. Constitutional Law § 2258

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 2258. Gambling and gaming—Horse racing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4285, 4292

The regulation of horse racing as a business does not generally violate due process of law.

The regulation of wagering on horse racing,[1] including off-track pari-mutuel betting,[2] has been upheld as against contentions that it results in a deprivation of property without due process of law.

Particular regulatory measures dealing with horse racing which have been upheld as against challenges based on due process grounds include provisions pertaining to jockey fees in the absence of contract,[3] jockey fines for refusal to ride,[4] owner and trainer discipline,[5] purse money withholding and redistribution,[6] horse drugging,[7] wagering for another for a fee,[8] wagering by the operation of a messenger service,[9] and ejection from the racetrack of undesirable persons.[10]

Footnotes

1 Ill.—People v. Monroe, 349 Ill. 270, 182 N.E. 439, 85 A.L.R. 605 (1932).

2 N.Y.—Finger Lakes Racing Association, Inc. v. New York State Off-Track Parimutuel Betting Commission, 30 N.Y.2d 207, 331 N.Y.S.2d 625, 282 N.E.2d 592 (1972).

3 La.—Louisiana Division of Horsemen's Benev. and Protective Ass'n v. Louisiana State Racing Commission, 391 So. 2d 589 (La. Ct. App. 4th Cir. 1980), writ not considered, 397 So. 2d 1362 (La. 1981).

4 U.S.—Ruane v. New York State Racing and Wagering Bd., 400 F. Supp. 819 (S.D. N.Y. 1975), judgment aff'd, 532 F.2d 860 (2d Cir. 1976).

5 Ohio—O'Daniel v. Ohio State Racing Commission, 37 Ohio St. 2d 87, 66 Ohio Op. 2d 194, 307 N.E.2d 529 (1974).

6 U.S.—Edelberg v. Illinois Racing Bd., 540 F.2d 279 (7th Cir. 1976).

Ky.—Kentucky State Racing Commission v. Fuller, 481 S.W.2d 298 (Ky. 1972).

Possession of electrical device

Disqualifying a horse and redistributing the purse because of a jockey's possession of an electrical device, a battery, did not violate the horse owner's due process rights, even if the owner did not know about the jockey's actions and did not collude with him and even if no one showed an effect on the race, where liability without proof of fault was warranted by the public interest.

Ark.—Jackson v. Arkansas Racing Com'n, 343 Ark. 307, 34 S.W.3d 740 (2001).

7 U.S.—Hudson v. Texas Racing Com'n, 455 F.3d 597 (5th Cir. 2006).

Fla.—Plante v. Department of Business and Professional Regulation, Div. of Pari-Mutuel Wagering, 685 So. 2d 886 (Fla. 4th DCA 1996).

8 U.S.—Nebraska Messenger Services Ass'n v. Thone, 611 F.2d 250 (8th Cir. 1979).

9 U.S.—Front Runner Messenger Service, Inc. v. Ghini, 468 F. Supp. 305 (N.D. Ill. 1979).

10 Pa.—Daly v. Com., Horse Racing Commission, 38 Pa. Commw. 77, 391 A.2d 1134 (1978).

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§ 2259. Health care workers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4286

The practice of medicine and related professions implicate substantive and procedural due process protections.

In some jurisdictions, the practice of medicine and related professions by properly licensed individuals are cognizable property interests rooted in state law for due process purposes.[1] In other jurisdictions, it has been stated that physicians do not have a broad property interest in continuing to practice medicine.[2]

In either case, the exercise of the right to practice medicine or a related profession is subject to the legislature's police power to enact statutes and regulations aimed at enhancing the public welfare, and where a statute bears a reasonable relationship to the legitimate interest of government, the legislature does not engage in an arbitrary or wrongful act in enacting the statute.[3] As such, a statute may limit the practice of cosmetic medicine to plastic surgeons and dermatologists,[4] or ban physicians from referring their patients for services at business entities in which they have a financial interest.[5]

It is not a violation of substantive due process for a statute to require the permanent revocation of medical licenses of health care workers who have been convicted of certain criminal offenses where the statute is rationally related to the legitimate state

interest of regulating the medical profession for the protection of the public.[6] Moreover, the termination of a health care worker does not deprive that person of a liberty interest in violation of the Due Process Clause where the termination does not preclude the worker from all government employment or from employment in his or her profession.[7] Similarly, a physician fails to state a substantive due process claim where a government agency reports that the settlement of a medical malpractice claim was made for the physician's benefit,[8] or where an investigation of a health care worker is disclosed, but his or her license is not revoked.[9]

In addition to the protection of substantive due process rights, due process rights are also implicated in administrative proceedings that may affect the right to practice medicine.[10] Procedural due process requirements are met where a physician is given an opportunity for a hearing at a meaningful time and in a meaningful manner prior to any action regarding his or her medical license.[11] In certain cases, however, a predeprivation hearing is not required, such as when the State reasonably determines that a medical license holder poses a risk to patients[12] or to public safety.[13]

CUMULATIVE SUPPLEMENT

Cases:

Nurse aide had a liberty interest in her ability to practice her chosen profession, as required to state Fifth Amendment procedural and substantive due process claims under § 1983 against District of Columbia and its contractor stemming from the denial of her application to renew her nurse aide certificate, since nursing was a common occupation of the community that was of the very essence of personal freedom and opportunity for which due process was meant to secure. U.S. Const. Amend. 5; 42 U.S.C.A. § 1983. Shume v. Pearson Education Inc., 306 F. Supp. 3d 117 (D.D.C. 2018).

[END OF SUPPLEMENT]

Footnotes

1 S.C.—Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).

2 U.S.—Jimenez v. Wellstar Health System, 596 F.3d 1304 (11th Cir. 2010) (applying Georgia law).
Other health care positions
Haw.—Shimose v. Hawaii Health Systems Corp., 134 Haw. 479, 345 P.3d 145 (2015) (radiological technician).

3 S.C.—Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).
Regulation of dentists and similar
Mont.—Wiser v. State, Dept. of Commerce, 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (2006) (denturist).
N.D.—Frokjer v. North Dakota Bd. of Dental Examiners, 2009 ND 79, 764 N.W.2d 657 (N.D. 2009) (dentist).
Vt.—In re Lakatos, 182 Vt. 487, 2007 VT 114, 939 A.2d 510 (2007) (dentist).

4 U.S.—Gonzalez-Droz v. Gonzalez-Colon, 660 F.3d 1 (1st Cir. 2011) (applying Puerto Rico law).

5 U.S.—Fresenius Medical Care Holdings, Inc. v. Tucker, 704 F.3d 935 (11th Cir. 2013) (applying Florida law).

6 Ill.—Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).

7 U.S.—Blantz v. California Dept. of Corrections and Rehabilitation, Div. of Correctional Health Care Services, 727 F.3d 917 (9th Cir. 2013).
As to governmental interference in a profession, generally, see § 2243.

8 U.S.—Rochling v. Department of Veterans Affairs, 725 F.3d 927 (8th Cir. 2013).
As to interference with one's occupational or professional reputation as a violation of due process, see § 2244.

9 U.S.—Neal v. Fields, 429 F.3d 1165 (8th Cir. 2005).

10 Mass.—Ingalls v. Board of Registration In Medicine, 445 Mass. 291, 837 N.E.2d 232 (2005).

Procedural due process rights of pharmacists

Wash.—Jones v. State, Dept. of Health, 170 Wash. 2d 338, 242 P.3d 825 (2010).

11 U.S.—Crum v. Vincent, 493 F.3d 988 (8th Cir. 2007) (applying Missouri law).

12 U.S.—Gonzalez-Droz v. Gonzalez-Colon, 660 F.3d 1 (1st Cir. 2011).

Permanent revocation without hearing

A statute requiring permanent revocation without a hearing of medical licenses of health care workers who had been convicted of certain criminal offenses did not violate procedural due process, where the risk of erroneous revocation was not great, since the existence of a conviction was a matter of public record that could be established without a fact-finding hearing, the State had a substantial interest in protecting patients, and it was presumed that the workers whose licenses were required to be suspended had received due process in the underlying criminal proceedings.

Ill.—Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).

13 U.S.—Guttman v. Khalsa, 669 F.3d 1101 (10th Cir. 2012) (there was no due process violation where a physician's medical license was revoked on the ground that his mental condition posed an imminent danger to public safety).

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§ 2260. Hospital staff privileges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4187

Although physicians have no constitutional right to obtain or retain staff privileges at public hospitals, a denial of such privileges must comport with substantive and procedural due process.

Although physicians have no constitutional right to obtain or retain staff privileges at public hospitals[1] merely on the basis of being licensed to practice medicine,[2] a denial of such privileges must comport with substantive[3] and procedural due process.[4] However, some jurisdictions hold that the termination of staff privileges do not violate substantive due process rights under the Fourteenth Amendment, absent a showing that the hospital committed an independent constitutional violation.[5]

There is nothing about the summary suspension of a physician's staff privileges per se which violates the physician's due process rights.[6] To be actionable under the Due Process Clause, statements accompanying a removal of hospital staff privileges: (1) must impugn the good name, reputation, honor, or integrity of the individual; (2) must be false; (3) must foreclose other employment opportunities; and (4) must be published.[7] However, in cases where a state must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process is enough to satisfy the requirements of due process.[8]

The award of exclusive contracts for the performance of particular hospital services, such as radiology,[9] does not violate due process, and neither does a hospital requirement that procedures administered in its various departments, such as radiology, pathology, anesthesiology, or coronary care, be performed by hospital-designated operators and not by a patient's private physician.[10]

Footnotes

1 U.S.—Daly v. Sprague, 675 F.2d 716, 3 Ed. Law Rep. 845 (5th Cir. 1982).

Public hospital as "state action"

The operation of a public hospital is a "state action," and a public hospital is required to meet the provisions of the Fourteenth Amendment in the admission of physicians to its staff.

U.S.—Chudacoff v. University Medical Center of Southern Nevada, 649 F.3d 1143 (9th Cir. 2011), for additional opinion, see 437 Fed. Appx. 609, 273 Ed. Law Rep. 616 (9th Cir. 2011).

Private hospitals

Physicians at private hospitals are not employees of the state so that a hospital board of trustees has broad discretion in the issuance, suspension, or denial of staff privileges.

Ohio—Gureasko v. Bethesda Hosp., 116 Ohio App. 3d 724, 689 N.E.2d 76 (1st Dist. Hamilton County 1996).

Right to consideration for admission only

A Wyoming statute, requiring hospitals receiving public funds to be open for practice to dentists, and stating that admission should not be predicated solely upon the type of degree of the applicant and that a governing body should consider each applicant's competency and character, did not provide a dentist with a property interest in membership to the medical staff of a hospital receiving public funds, inasmuch as the statute at most created an interest in consideration for admission to the medical staffs of Wyoming public hospitals.

U.S.—Ripley v. Wyoming Medical Center, Inc., 559 F.3d 1119 (10th Cir. 2009).

2 U.S.—Capili v. Shott, 487 F. Supp. 710 (S.D. W. Va. 1978), judgment aff'd, 620 F.2d 438 (4th Cir. 1980).

Wash.—Ritter v. Board of Com'rs of Adams County Public Hospital Dist. No. 1, 96 Wash. 2d 503, 637 P.2d 940 (1981).

3 U.S.—Branch v. Hempstead County Memorial Hosp., 539 F. Supp. 908 (W.D. Ark. 1982).

Cal.—Miller v. National Medical Hospital, 124 Cal. App. 3d 81, 177 Cal. Rptr. 119 (4th Dist. 1981).

4 U.S.—Daly v. Sprague, 675 F.2d 716, 3 Ed. Law Rep. 845 (5th Cir. 1982).

Cal.—Sahlolbei v. Providence Healthcare, Inc., 112 Cal. App. 4th 1137, 5 Cal. Rptr. 3d 598 (4th Dist. 2003) (the hospital was required to provide the physician with a hearing prior to, not after, terminating his staff membership).

Ill.—Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).

No due process violation where formal procedures held

Wyo.—Guier v. Teton County Hosp. Dist., 2011 WY 31, 248 P.3d 623 (Wyo. 2011).

Effect of voluntary resignation

Even if surgeons had a constitutionally protected property interest in their staff privileges at a state hospital, they voluntarily resigned their privileges, rather than being constructively discharged, and thus, their procedural due process rights were not violated.

U.S.—Narotzky v. Natrona County Memorial Hosp. Bd. of Trustees, 610 F.3d 558 (10th Cir. 2010).

5 U.S.—Draghi v. County of Cook, 184 F.3d 689 (7th Cir. 1999).

6 Ohio—Gureasko v. Bethesda Hosp., 116 Ohio App. 3d 724, 689 N.E.2d 76 (1st Dist. Hamilton County 1996).

7 U.S.—Pfenninger v. Exempla, Inc., 116 F. Supp. 2d 1184 (D. Colo. 2000).

Effect of professional review

A hospital's professional review activity was concerned with the competence or professional conduct of a physician and affected or may have affected adversely the physician's clinical privileges or membership in a professional society.

La.—Granger v. Christus Health Central Louisiana, 144 So. 3d 736 (La. 2013).

As to interference with one's occupational or professional reputation as a violation of due process, see § 2244.

8 U.S.—Patel v. Midland Memorial Hosp. and Medical Center, 298 F.3d 333 (5th Cir. 2002); Ferraro v. Board of Trustees of Labette County Medical Center, 106 F. Supp. 2d 1195 (D. Kan. 2000), judgment aff'd, 28 Fed. Appx. 899 (10th Cir. 2001).

9 U.S.—Stears v. Sheridan County Memorial Hosp. Bd. of Trustees, 491 F.3d 1160 (10th Cir. 2007) (applying Wyoming law).

Tenn.—City of Cookeville ex rel. Cookeville Regional Med. Ctr. v. Humphrey, 126 S.W.3d 897 (Tenn. 2004).

10 Pa.—Adler v. Montefiore Hospital Ass'n of Western Pennsylvania, 453 Pa. 60, 311 A.2d 634 (1973).

Outpatient kidney dialysis

Even if a nephrologist was deprived of a liberty interest as the result of a hospital's refusal to grant him further access to its end-stage renal disease (ESRD) units for outpatient kidney dialysis upon severance of his practice from that of a physician with whom the hospital had an exclusive medical director contract, the nephrologist was not entitled to a hearing because that deprivation occurred as the result of a quasi-legislative decision not based on his individual competency or qualifications as a nephrologist.

U.S.—Martin v. Memorial Hosp. at Gulfport, 130 F.3d 1143 (5th Cir. 1997).

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§ 2261. Hospital staff privileges—Professors and residents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4187

Although a professor of medicine may not have a constitutionally protected property interest in clinical privileges, residents may be entitled to due process upon termination of a residency program.

A professor of medicine tenured at a state university school of medicine from whom clinical privileges are withdrawn at a medical center associated with the university has been found not to have a constitutionally protected property interest in such privilege.[1]

Residents have a property interest in their residence programs at public hospitals[2] which may not be terminated without according them due process even though a full adversary hearing either before or after termination may not be required.[3] However, the termination of the residency of a resident physician does not infringe any liberty interest protected by due process.[4]

Footnotes

1 U.S.—Daly v. Sprague, 675 F.2d 716, 3 Ed. Law Rep. 845 (5th Cir. 1982).
Chief of staff
The chief of staff of a state university hospital system was an at-will administrative employee, rather than a staff employee, and therefore the chief of staff had no protected property interest in continued employment.
Ala.—Ex parte Moulton, 116 So. 3d 1119, 295 Ed. Law Rep. 401 (Ala. 2013).

2 U.S.—Ong v. Tovey, 552 F.2d 305 (9th Cir. 1977).

3 U.S.—Stretten v. Wadsworth Veterans Hospital, 537 F.2d 361 (9th Cir. 1976).

4 U.S.—Ong v. Tovey, 552 F.2d 305 (9th Cir. 1977).

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§ 2262. Insurance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4288

In general, the constitutionality, under the Due Process Clause of the Fourteenth Amendment, of state regulation of the insurance business has been upheld although particular provisions have been found to violate due process.

The constitutionality, under the Due Process Clause of the Fourteenth Amendment, of state regulation of the insurance business has been upheld[1] with respect to such diverse matters as individual mandates to maintain a minimum level of health insurance,[2] reserve requirements,[3] rates,[4] and rating organizations.[5] Also, the constitutionality of such regulations has been upheld with respect to the limitation of defenses,[6] life insurance replacements,[7] policy cancellations,[8] refusal to renew a policy, or increasing the premium,[9] agency terminations,[10] and reciprocal insurance.[11]

The regulation of insolvent insurers has also been upheld as to provisions governing their liquidation[12] and the payment of outstanding claims against them.[13]

Legislation requiring insurance carriers to provide in their coverages major medical,[14] maternity care,[15] income continuation benefits,[16] compensation for malicious mischief and vandalism,[17] and requiring the issuance of no-fault automobile insurance,[18] as well as underinsured motorist coverage for third-party victims, has been upheld.[19]

Due process has been held to be violated by particular provisions which require insurers doing business in the state to report extensive information to the state insurance commissioner regarding policies issued to Holocaust victims where the insurers had no contact with the state during the Holocaust era.[20] Also, while an insurance company which elects to terminate doing business in a state may be required to do so in an orderly fashion and without unnecessary disruption, it may not be required, under the Due Process Clause of the Fourteenth Amendment, to continue to do business in a state indefinitely.[21] The power of the state to regulate the insurance business is also subject to the due process rights of the insureds.[22]

Footnotes

1 U.S.—California State Auto. Ass'n Inter-Ins. Bureau v. Maloney, 341 U.S. 105, 71 S. Ct. 601, 95 L. Ed. 788 (1951).

2 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013); Coons v. Lew, 762 F.3d 891 (9th Cir. 2014), as amended, (Sept. 2, 2014).

3 Wis.—Duel v. State Farm Mut. Auto. Ins. Co., 240 Wis. 161, 2 N.W.2d 871 (1942).

4 U.S.—Aetna Ins. Co. v. Hyde, 275 U.S. 440, 48 S. Ct. 174, 72 L. Ed. 357 (1928).
No-fault insurance rate regulatory scheme
Mich.—Shavers v. Kelley, 402 Mich. 554, 267 N.W.2d 72 (1978).
Credit life insurance
Va.—American Bankers Life Assur. Co. of Florida v. Division of Consumer Counsel, Office of Atty. Gen., 220 Va. 773, 263 S.E.2d 867 (1980).

5 Fla.—Florida Welding & Erection Service, Inc. v. American Mut. Ins. Co. of Boston, 285 So. 2d 386 (Fla. 1973).

6 Ill.—Economy Fire & Cas. Co. v. Thornsberry, 66 Ill. App. 3d 225, 23 Ill. Dec. 13, 383 N.E.2d 780 (5th Dist. 1978) (misrepresentation in application).

7 Tex.—Nunley v. State Bd. of Ins., 552 S.W.2d 624 (Tex. Civ. App. Eastland 1977), writ refused n.r.e., (Oct. 5, 1977).

8 Nev.—Reinkemeyer v. Safeco Ins. Co. of America, 117 Nev. 44, 16 P.3d 1069 (2001).
W. Va.—Smith v. Municipal Mut. Ins. Co., 169 W. Va. 296, 289 S.E.2d 669 (1982).

9 Nev.—Reinkemeyer v. Safeco Ins. Co. of America, 117 Nev. 44, 16 P.3d 1069 (2001).

10 Fla.—Getter v. Yanks, 290 So. 2d 543 (Fla. 3d DCA 1974).

11 U.S.—Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S. Ct. 602, 87 L. Ed. 777, 145 A.L.R. 1113 (1943).
"Take all comers" requirement upheld
A regulation establishing a reinsurance facility did not deny the due process rights of an insurer since a provision requiring an insurer to "take all comers," coupled with an attendant option to cede, did not impose a mandatory acceptance of all risks.
N.H.—State Farm Mut. Auto. Ins. Co. v. Whaland, 121 N.H. 400, 430 A.2d 174 (1981).

12 U.S.—Superintendent of Ins. of State of N. Y. v. Bankers Life & Cas. Co., 401 F. Supp. 640 (S.D. N.Y. 1975).
Ky.—Kentucky Cent. Life Ins. Co. v. Stephens, 897 S.W.2d 583 (Ky. 1995).

13 Fla.—Manning v. Travelers Ins. Co., 250 So. 2d 872 (Fla. 1971).
Utah—Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n, 564 P.2d 751 (Utah 1977).
Assessments upheld
Assessments against insurers authorized by statute for the purpose of paying the claims of policyholders of the insurer which had been ordered into liquidation did not constitute an unconstitutional taking of property without due process.

Wash.—Aetna Life Ins. Co. v. Washington Life and Disability Ins. Guaranty Ass'n, 83 Wash. 2d 523, 520 P.2d 162 (1974).

14 U.S.—Insurers' Action Council, Inc. v. Markman, 490 F. Supp. 921 (D. Minn. 1980), judgment aff'd, 653 F.2d 344 (8th Cir. 1981).

Requirement of standard plan

U.S.—Golden Rule Ins. Co. v. Stephens, 912 F. Supp. 261 (E.D. Ky. 1995).

15 N.Y.—Health Ins. Ass'n of America v. Harnett, 44 N.Y.2d 302, 405 N.Y.S.2d 634, 376 N.E.2d 1280 (1978).

16 N.J.—Frazier v. Liberty Mut. Ins. Co., 150 N.J. Super. 123, 374 A.2d 1259 (Law Div. 1977).

17 N.J.—New Jersey Ins. Underwriting Ass'n v. Clifford, 112 N.J. Super. 195, 270 A.2d 723 (App. Div. 1970).

18 N.J.—Sheeran v. Nationwide Mut. Ins. Co., Inc., 80 N.J. 548, 404 A.2d 625 (1979) (no licensed insurance carrier can refuse to renew required coverage).

19 Ill.—Mercury Indem. Co. of Illinois v. Kim, 358 Ill. App. 3d 1, 294 Ill. Dec. 191, 830 N.E.2d 603 (1st Dist. 2005).

20 U.S.—Gerling Global Reinsurance Corp. of America v. Gallagher, 267 F.3d 1228 (11th Cir. 2001).

21 N.Y.—People ex rel. Lewis v. Safeco Ins. Co. of America, 98 Misc. 2d 856, 414 N.Y.S.2d 823 (Sup 1978).

Phaseout statute

A Moratorium Phaseout Statute, prohibiting residential line insurers from entirely withdrawing from the Florida insurance market, was supported by a rational basis as required by substantive due process.

U.S.—Vesta Fire Ins. Corp. v. State of Fla., 141 F.3d 1427 (11th Cir. 1998).

22 U.S.—Garcia-Rubiera v. Fortuno, 665 F.3d 261 (1st Cir. 2011) (it was not violative of substantive due process for Puerto Rico to charge privately insured vehicle owners duplicate fees up front in order to guarantee coverage, and thereafter take custody of the payments, provided that the Commonwealth also implemented a meaningful notice and refund process that complied with due process).

Antistacking statute

An antistacking statute violated substantive due process to the extent it allowed an automobile insurer to charge premiums for nonexistent underinsured motorist (UIM) coverage where it was not rationally related to the stated objective of maintaining affordable insurance or any other permissible legislative objective and was arbitrary and capricious.

Mont.—Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 Mont. 107, 67 P.3d 892 (2003).

Antirebate statutes and regulations

Antirebate statutes and regulations, which prohibit title insurance agents from negotiating or rebating to their clients any portion of the risk premium for title insurance, violated the substantive due process right of an insured builder and developer to bargain for services, where the rebate would only come from the agent's share of the risk premium and would not affect the portion of the premium guaranteed to the insurer or the cost for related title services, and the statutes did not protect against insolvency.

Fla.—Chicago Title Ins. Co. v. Butler, 770 So. 2d 1210 (Fla. 2000).

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2. Particular Types of Businesses, Occupations, or Professions

§ 2263. Insurance—Settlements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4288

The regulation of insurance settlement claims does not, in general, violate due process.

State regulation of the settlement of insurance claims[1] with respect to such coverages as life,[2] fire,[3] homeowner's,[4] and automobile[5] insurance, including settlements under "no-fault" automobile insurance provisions,[6] has been upheld as not violative of constitutional due process guaranties, and so has state regulation with respect to such matters as compulsory arbitration[7] and the allowance of attorney's fees following litigation necessitated by a wrongful denial of a claim.[8]

Footnotes

1 N.J.—Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 440 A.2d 469 (App. Div. 1981).
Improper claims practice
Ill.—Kenilworth Ins. Co. v. Mauck, 50 Ill. App. 3d 823, 8 Ill. Dec. 665, 365 N.E.2d 1051 (1st Dist. 1977).

2 N.D.—Lapland v. Stearns, 79 N.D. 62, 54 N.W.2d 748 (1952).

Viatical settlements

(1) A viatical settlement provider's right to do business in Florida was not a "fundamental" right and, thus, it was not protected by the substantive component of the Due Process Clause where the provider's right to do business in the state was established under the Florida Viatical Settlement Act, not the Constitution.

U.S.—Coventry First, LLC v. McCarty, 605 F.3d 865 (11th Cir. 2010).

(2) An investor for whom a viatical settlements manager acquired the life insurance policy of a terminally ill third party had a property interest in the proceeds of such policy, as would be protected by the Due Process Clause, since the manager had "matched" the investor's investment with that policy, and the third party assigned the policy to the investor.

U.S.—Liberte Capital Group, LLC v. Capwill, 421 F.3d 377, 2005 FED App. 0358P (6th Cir. 2005).

Payment to beneficiary without investigation

Cal.—Leonard v. Occidental Life Ins. Co., 31 Cal. App. 3d 117, 106 Cal. Rptr. 899 (1st Dist. 1973).

3 Cal.—Breshears v. Indiana Lumbermens Mut. Ins. Co. of Indianapolis, Ind., 256 Cal. App. 2d 245, 63 Cal. Rptr. 879 (5th Dist. 1967).

4 Ill.—Aetna Ins. Co. v. Janson, 60 Ill. App. 3d 957, 18 Ill. Dec. 143, 377 N.E.2d 296 (1st Dist. 1978).

5 Ariz.—State Farm Mut. Auto. Ins. Co. v. Read Mullan Motor Co., 108 Ariz. 577, 503 P.2d 798 (1972).

Conn.—Whitfield v. Empire Mut. Ins. Co., 167 Conn. 499, 356 A.2d 139 (1975).

Ohio—Estate of Kulka v. Progressive Ins. Co., 2003-Ohio-1880, 2003 WL 1871001 (Ohio Ct. App. 11th Dist. Portage County 2003).

6 N.Y.—Criterion Ins. Co. of Washington, D. C. v. Commercial Union Assur. Co., 89 Misc. 2d 36, 390 N.Y.S.2d 953 (Sup 1976).

Deductible increase invalidated

To interpret the no-fault insurance statute so as to mean that the commissioner of insurance could increase the deductible under no-fault automobile liability insurance policies without limitation would be a denial of due process.

Mich.—Davidson v. Johnson, 79 Mich. App. 660, 262 N.W.2d 887 (1977).

Tractor exclusion upheld

Mich.—Pioneer State Mut. Ins. Co. v. Allstate Ins. Co., 107 Mich. App. 261, 309 N.W.2d 598 (1981), judgment aff'd, 417 Mich. 590, 339 N.W.2d 470 (1983).

7 U.S.—Country-Wide Ins. Co. v. Harnett, 426 F. Supp. 1030 (S.D. N.Y. 1977), judgment aff'd, 431 U.S. 934, 97 S. Ct. 2644, 53 L. Ed. 2d 252 (1977).

8 Del.—Brandywine Shoppe, Inc. v. State Farm Fire & Cas. Co., 307 A.2d 806 (Del. Super. Ct. 1973).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2264. Insurance—Foreign insurance companies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4288

Foreign insurance companies may have certain requirements imposed on them without violating due process.

A foreign insurance company may be required by a state to obtain a certificate of authority,[1] furnish a bond,[2] and be amenable to process within the state without violating due process.[3]

Footnotes

1 Cal.—People v. United Nat. Life Ins. Co., 66 Cal. 2d 577, 58 Cal. Rptr. 599, 427 P.2d 199 (1967).

2 U.S.—Home Indem. Co. of New York v. O'Brien, 104 F.2d 413 (C.C.A. 6th Cir. 1939).
Unauthorized insurers required to post bond before answering suit
N.Y.—Curiale v. Ardra Ins. Co., Ltd., 88 N.Y.2d 268, 644 N.Y.S.2d 663, 667 N.E.2d 313 (1996).

3 Neb.—In re Kandlbinder's Estate, 183 Neb. 178, 159 N.W.2d 199 (1968).

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§ 2265. Intoxicating beverages

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4289

State regulation or prohibition of the sale or possession of intoxicating beverages is not precluded by, but must conform to, the due process guaranties of the Fourteenth Amendment.

The right to engage in the sale of intoxicating liquors involves a mere privilege,[1] and the Due Process Clause of the Fourteenth Amendment does not preclude state or local regulation[2] or prohibition[3] of the manufacture, transportation, importation, sale, or possession of intoxicating liquors. Such regulation, pursuant to the Twenty-First Amendment, is subject, however, to the due process protections of the Fourteenth Amendment[4] or of a state constitution.[5] But while the states have broad power to regulate liquor under the Twenty-First Amendment, such power does not allow states to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers; if a state chooses to allow direct shipment of wine, it must do so on evenhanded terms.[6]

The enforcement of local option laws,[7] as by designations of exclusive wholesalers and sales territories,[8] or limitations on locations where beer and wine may be sold, have withstood challenges based on due process grounds[9] although a statute allowing

a local option election to prohibit the sale of liquor at a particular street address is unconstitutional as a denial of due process.[10] Additionally, the encouragement of competition and the prevention of monopolies by the abolition of exclusive dealerships, promotion of intrabrand competition,[11] restriction on the number of liquor licenses which may be held by the same family,[12] limitations on credit sales to retailers,[13] and "tied house" legislation generally,[14] which precludes manufacturers from having any interest in wholesalers[15] or manufacturers and wholesalers from having an interest in retail establishments, and which otherwise regulates business relations between retailers, manufacturers, and wholesalers have withstood challenges based on due process grounds.[16]

Moreover, the constitutionality of regulation has been upheld with respect to statutes or regulations which fix the retail price of intoxicating liquor;[17] prohibit sales to intoxicated persons[18] or to persons below a certain age;[19] prohibit intoxicated persons from remaining on the premises;[20] require a liquor license holder to maintain a house that is not disorderly or riotous, indecent, or improper;[21] prohibit common carriers from selling liquor;[22] prohibit sexually oriented businesses from obtaining a liquor license;[23] and prohibit licensed liquor establishments from exposing to public view certain body parts of performers.[24]

A town's refusal to transfer or issue a liquor license does not involve any truly horrific circumstances as would render such denial a violation of substantive due process.[25]

Footnotes

1 Idaho—Fuchs v. State, Dept. of Idaho State Police, Bureau of Alcohol Beverage Control, 152 Idaho 626, 272 P.3d 1257 (2012).
Ill.—Wisam 1, Inc. v. Illinois Liquor Control Com'n, 2014 IL 116173, 385 Ill. Dec. 1, 18 N.E.3d 1 (Ill. 2014), cert. denied, 135 S. Ct. 1494 (2015).
Neb.—F & T, Inc. v. Nebraska Liquor Control Com'n, 7 Neb. App. 973, 587 N.W.2d 700 (1998).

2 Ill.—Hornstein v. Illinois Liquor Control Commission, 412 Ill. 365, 106 N.E.2d 354 (1952).
Neb.—F & T, Inc. v. Nebraska Liquor Control Com'n, 7 Neb. App. 973, 587 N.W.2d 700 (1998).
Utah—Shaw v. Orem City, 117 Utah 288, 214 P.2d 888 (1950).
City control
U.S.—Barnes v. Merritt, 428 F.2d 284 (5th Cir. 1970).

3 U.S.—Indianapolis Brewing Co. v. Liquor Control Commission of State of Michigan, 305 U.S. 391, 59 S. Ct. 254, 83 L. Ed. 243 (1939) (abrogated on other grounds by, Granholm v. Heald, 544 U.S. 460, 125 S. Ct. 1885, 161 L. Ed. 2d 796 (2005)).
Kan.—Colby Distributing Co., Inc. v. Lennen, 227 Kan. 179, 606 P.2d 102 (1980).
Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).
Moratorium on sale of single units of beer in specified area
U.S.—Decatur Liquors, Inc. v. District of Columbia, 478 F.3d 360 (D.C. Cir. 2007) (applying District of Columbia law).

4 U.S.—California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 100 S. Ct. 937, 63 L. Ed. 2d 233 (1980); Heaven Hill Distilleries, Inc. v. Novak, 423 U.S. 908, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).
Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).
N.H.—State v. Lambert, 119 N.H. 881, 409 A.2d 794 (1979).

5 U.S.—Heaven Hill Distilleries, Inc. v. Novak, 423 U.S. 908, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).
Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

6 U.S.—Granholm v. Heald, 544 U.S. 460, 125 S. Ct. 1885, 161 L. Ed. 2d 796 (2005).

7 U.S.—M & F Supermarket, Inc. v. Owens, 997 F. Supp. 908 (S.D. Ohio 1997).
Ill.—Cooper v. Marcin, 44 Ill. App. 3d 918, 3 Ill. Dec. 533, 358 N.E.2d 1218 (1st Dist. 1976).

Utah—Shaw v. Orem City, 117 Utah 288, 214 P.2d 888 (1950).

Divided municipal area

The fact that a ward for which a local option election is called includes a portion of a municipality does not deprive a resident of the included municipal area of due process of law.

La.—Nomey v. Jackson Parish Police Jury, 343 So. 2d 315 (La. Ct. App. 2d Cir. 1977).

Size of locality challenged

La.—Nomey v. State, Through Edwards, 315 So. 2d 709 (La. 1975).

8 U.S.—Allstate Beer, Inc. v. Julius Wile Sons & Co., Inc., 479 F. Supp. 605 (N.D. Ga. 1979).

No violation of due process

A beer franchise law regulating business relations between malt beverage manufacturers, importers, and wholesalers did not violate due process.

N.C.—Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998).

9 Ga.—Bradshaw v. Dayton, 270 Ga. 884, 514 S.E.2d 831 (1999).

10 U.S.—Club Misty, Inc. v. Laski, 208 F.3d 615 (7th Cir. 2000).

11 Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

12 U.S.—Parks v. Allen, 426 F.2d 610 (5th Cir. 1970).

13 Fla.—Pickerill v. Schott, 55 So. 2d 716 (Fla. 1951).

Ill.—Weisberg v. Taylor, 409 Ill. 384, 100 N.E.2d 748 (1951).

Tex.—Neel v. Texas Liquor Control Bd., 259 S.W.2d 312 (Tex. Civ. App. Austin 1953), writ refused n.r.e.

Beer for cash only

Statute in effect requiring beer retailers to purchase for cash while other statutes allowed retailers of alcoholic beverages to purchase on credit did not result in a denial of due process.

Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

14 Fla.—Pickerill v. Schott, 55 So. 2d 716 (Fla. 1951).

N.J.—Affiliated Distillers Brands Corp. v. Sills, 56 N.J. 251, 265 A.2d 809 (1970), opinion amended on reh'g on other grounds, 60 N.J. 342, 289 A.2d 257 (1972).

Tex.—Neel v. Texas Liquor Control Bd., 259 S.W.2d 312 (Tex. Civ. App. Austin 1953), writ refused n.r.e.

15 N.J.—Affiliated Distillers Brands Corp. v. Sills, 56 N.J. 251, 265 A.2d 809 (1970), opinion amended on other grounds on reh'g, 60 N.J. 342, 289 A.2d 257 (1972).

16 Fla.—Pickerill v. Schott, 55 So. 2d 716 (Fla. 1951).

Prohibition on loans from gambling operation

A state Department of Revenue's order declaring that it would revoke a liquor distributor's license unless the owner of a controlling interest in the distributor, who also owned a controlling interest in a gambling operator, ceased making loans to alcohol retailers from the gambling operator's business, did not violate the distributor's due process rights.

Mont.—Shelby Distributors, LLC v. Montana Dept. of Revenue, 2009 MT 80, 349 Mont. 489, 206 P.3d 899 (2009).

17 Md.—Fowler v. Harris, 174 Md. 398, 200 A. 825 (1938).

Minimum retail price maintenance

Cal.—Big Boy Liquors, Limited v. Alcoholic Beverage Control Appeals Bd., 71 Cal. 2d 1226, 81 Cal. Rptr. 258, 459 P.2d 674 (1969).

18 Vt.—Ackerman v. Kogut, 117 Vt. 40, 84 A.2d 131 (1951).

19 Ill.—Illinois Liquor Control Commission v. Calumet City, 28 Ill. App. 3d 279, 328 N.E.2d 153 (1st Dist. 1975).

20 Vt.—In re Rusty Nail Acquisition, Inc., 186 Vt. 195, 2009 VT 68, 980 A.2d 758 (2009).

21 U.S.—Hegwood v. City of Eau Claire, 676 F.3d 600 (7th Cir. 2012) (applying Wisconsin law).

22 U.S.—National R. R. Passenger Corp. v. Miller, 358 F. Supp. 1321 (D. Kan. 1973), judgment aff'd, 414 U.S. 948, 94 S. Ct. 285, 38 L. Ed. 2d 205 (1973).

23 U.S.—Illusions—Dallas Private Club, Inc. v. Steen, 482 F.3d 299 (5th Cir. 2007).

24 Ill.—City of Chicago v. Pooh Bah Enterprises, Inc., 224 Ill. 2d 390, 309 Ill. Dec. 770, 865 N.E.2d 133 (2006).

25 U.S.—Harron v. Town of Franklin, 660 F.3d 531 (1st Cir. 2011).

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K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2266. Oil and gas; mining

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4290

Due process of law is not denied by reasonable regulations with respect to the production, use, or other disposition of oil or gas, or with respect to the conduct of mining.

The exercise of state power to prevent unnecessary loss, destruction, or waste of gas and oil is not repugnant to the Due Process Clause of the Fourteenth Amendment, and a state may, accordingly, enact regulations for the purpose of conservation and prevention of waste;[1] however, it is imperative that regulations adopted pursuant to such state purpose have a reasonable relationship to conservation and prevention of waste or they will constitute an unreasonable interference with private property.[2] A state may also, without violating constitutional due process guaranties, require drillers of wells to obtain the consent of the property's surface owners.[3]

Due process is not violated by legislation which authorizes a state regulatory commission to establish drilling and spacing units of a particular size[4] and to require the owners of two or more tracts sharing a common source of supply to pool their interests[5] and to participate in the production resulting from the drilling of wells thereon.[6]

Regulations in the public interest of mining operations have generally withstood challenges on due process grounds,[7] such as measures requiring that miners on federal land within a state obtain a state permit,[8] and statutes regulating the dewatering of surface mines.[9]

Administrative agencies may act to control naturally occurring radioactive materials[10] and saltwater contamination.[11]

CUMULATIVE SUPPLEMENT

Cases:

County floodplain administrator's denial of coal mining company's floodplain development permit application did not violate due process, since the mining company did not have a constitutionally protected vested right to use its property for mining. U.S. Const. Amend. 14; Tex. Const. art 1, § 19. Dos Republicas Coal Partnership v. Saucedo, 477 S.W.3d 828 (Tex. App. Corpus Christi 2015), rule 53.7(f) motion granted, (Dec. 15, 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 71 S. Ct. 215, 95 L. Ed. 190 (1950).
Ala.—Ancora Corp. v. Miller Oil Purchasing Co., 396 So. 2d 672 (Ala. 1981).
Okla.—Anderson-Prichard Oil Corp. v. Corporation Com'n, 1953 OK 9, 207 Okla. 686, 252 P.2d 450 (1953).

2 Okla.—Carter Oil Co. v. State, 1951 OK 272, 205 Okla. 541, 240 P.2d 787 (1951).
Tex.—Marrs v. Railroad Commission, 142 Tex. 293, 177 S.W.2d 941 (1944).

3 W. Va.—Devon Corp. v. Miller, 167 W. Va. 362, 280 S.E.2d 108 (1981).

4 Okla.—Landowners, Oil, Gas and Royalty Owners v. Corporation Commission, 1966 OK 111, 415 P.2d 942 (Okla. 1966).

5 Okla.—Texas Oil & Gas Corp. v. Rein, 1974 OK 8, 534 P.2d 1277 (Okla. 1974).
Modification of private agreement authorized
Okla.—Landowners, Oil, Gas and Royalty Owners v. Corporation Commission, 1966 OK 225, 420 P.2d 542 (Okla. 1966).

6 Ala.—State Oil and Gas Bd. of Ala. v. Seaman Paper Co., 285 Ala. 725, 235 So. 2d 860 (1970).
Okla.—Ward v. Corporation Commission, 1972 OK 122, 501 P.2d 503 (Okla. 1972).

7 U.S.—Cumberland Coal Resources, LP v. Federal Mine Safety and Health Review Com'n, 515 F.3d 247 (3d Cir. 2008).
Minn.—State v. Hobart Iron Co., 143 Minn. 457, 176 N.W. 758 (1920).
W. Va.—Pond Creek Pocahontas Co. v. Alexander, 137 W. Va. 864, 74 S.E.2d 590 (1953).
Retroactive liability for "orphan" retirees
Coal Industry Retiree Health Benefit Act's imposition of retroactive liability for "orphan" retirees did not violate substantive due process, even if a responsible coal company did not profit directly from the orphans' labor, since it was rational for Congress to require all coal mine operators bound by prior coal industry agreements, who each profited from retired miners' labor, to share responsibility for an industry-wide problem of orphan retiree benefits, and to require operators to participate in providing sufficient financing to cover all beneficiaries of a combined fund, made up of preexisting industry funds, as the operators profited from the labor peace and employee benefits obtained by the existence of various funds.
U.S.—In re Blue Diamond Coal Co., 79 F.3d 516, 1996 FED App. 0097P (6th Cir. 1996).

8 Idaho—State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).
Or.—State ex rel. Cox v. Hibbard, 31 Or. App. 269, 570 P.2d 1190 (1977).

9 Md.—Maryland Aggregates Ass'n, Inc. v. State, 337 Md. 658, 655 A.2d 886 (1995).

10 Miss.—Boyles v. Mississippi State Oil & Gas Bd., 794 So. 2d 149 (Miss. 2001).

11 Okla.—Union Texas Petroleum Corp. v. Jackson, 1995 OK CIV APP 63, 909 P.2d 131 (Ct. App. Div. 1 1995).

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XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2267. Sales and marketing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4294

Under the Due Process Clause, the sale of goods may be regulated.

A legislature, in the exercise of its power to promote the public health and morals and to protect the public against fraud, may impose reasonable regulations on the sale of merchandise,[1] as well as forbid the sale of injurious articles.[2] Accordingly, state legislation designed to prevent deceptive sales practices,[3] including consumer credit[4] and "truth in lending" acts, has been found not to violate constitutional due process guaranties.[5]

Footnotes

1 U.S.—Kentucky Whip & Collar Co. v. Illinois Cent. R. Co., 299 U.S. 334, 57 S. Ct. 277, 81 L. Ed. 270 (1937).
Used car dealership license
U.S.—Lindquist v. City of Pasadena, Tex., 525 F.3d 383 (5th Cir. 2008) (applying Texas law).

Obscene material

The sale of obscene material is not protected by the Due Process Clause of the Fourteenth Amendment.

Tex.—Ex parte Dave, 220 S.W.3d 154 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (June 20, 2007).

Children's merchandise

U.S.—Toy Mfrs. of America, Inc. v. Consumer Products Safety Commission, 630 F.2d 70 (2d Cir. 1980) (toys); Springs Mills, Inc. v. Consumer Product Safety Commission, 434 F. Supp. 416 (D.S.C. 1977) (sleepwear).

Pyramid scheme

U.S.—Space Age Products, Inc. v. Gilliam, 488 F. Supp. 775 (D. Del. 1980).

2 Kan.—State v. Nossaman, 107 Kan. 715, 193 P. 347, 20 A.L.R. 921 (1920).

Handgun sales ban in city

Cal.—California Rifle & Pistol Assn. v. City of West Hollywood, 66 Cal. App. 4th 1302, 78 Cal. Rptr. 2d 591 (2d Dist. 1998).

Cigarette vending machine ban in town

N.J.—General Food Vending Inc. v. Town of Westfield, 288 N.J. Super. 442, 672 A.2d 760 (Law Div. 1995).

City's moratorium against new mobile home sales establishments

U.S.—Herrington v. City of Pearl, Miss., 908 F. Supp. 418 (S.D. Miss. 1995).

Banning sale of fireworks within 5,000-foot radius of city limits

U.S.—PPC Enterprises, Inc. v. Texas City, Texas, 76 F. Supp. 2d 750 (S.D. Tex. 1999).

3 Wis.—State v. Amoco Oil Co., 97 Wis. 2d 226, 293 N.W.2d 487 (1980).

4 U.S.—Aldens, Inc. v. LaFollette, 552 F.2d 745 (7th Cir. 1977).

5 U.S.—Mourning v. Family Publications Service, Inc., 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).

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16D C.J.S. Constitutional Law § 2268

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2268. Securities and commodities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4295

The regulation of securities and commodities transactions do not, generally, violate constitutional due process guaranties.

Federal and state regulations of securities and commodities transactions have been upheld as constitutional under the Due Process Clauses of the Fifth[1] and the Fourteenth Amendments, respectively.[2] Where a rational basis exists for the distinction between members of an exchange and nonmembers, with respect to the adjudication of violations of the exchange, due process is not violated where the exchange has limited jurisdiction over nonmembers.[3]

Footnotes

1 U.S.—Speed v. Transamerica Corp., 99 F. Supp. 808 (D. Del. 1951), opinion supplemented, 100 F. Supp. 461 (D. Del. 1951).

2 U.S.—Commodity Exchange, Inc. v. Commodity Futures Trading Com'n, 543 F. Supp. 1340 (S.D. N.Y. 1982), judgment aff'd, 703 F.2d 682 (2d Cir. 1983).

Tex.—Holladay v. Intercontinental Industries, Inc., 476 S.W.2d 779 (Tex. Civ. App. Austin 1972), writ refused n.r.e., (June 14, 1972).

3 U.S.—Saberi v. Commodity Futures Trading Com'n, 488 F.3d 1207 (9th Cir. 2007).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

K. Trade, Business, or Profession

2. Particular Types of Businesses, Occupations, or Professions

§ 2269. Other types of professions, trades, or businesses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4268, 4270 to 4272, 4274 to 4281, 4284, 4291 to 4293, 4296, 4297

The validity, under constitutional due process guaranties, of governmental regulation has been challenged and adjudicated with respect to numerous professions, trades, and business activities.

Adjudication has been made with respect to the constitutionality, under constitutional due process guaranties, of the regulation of various professions, trades, and business activities, besides those previously discussed, such as accountants,[1] adult homes,[2] bondsmen,[3] cemeteries,[4] child care,[5] chiropractic practice,[6] engineers,[7] manufacturing,[8] fishing,[9] freight handlers,[10] funeral homes,[11] impound lots,[12] journalists,[13] optometry,[14] payday loan businesses,[15] pawnbrokers,[16] pest control licensing,[17] pilots,[18] real estate brokers,[19] and veterinarians.[20]

Footnotes

1 Neb.—Troshynski v. Nebraska State Bd. of Public Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

2 U.S.—Iheama v. Mahoning County Mental Health Bd., 115 F. Supp. 2d 866 (N.D. Ohio 2000).
Alaska—Hill v. Giani, 296 P.3d 14 (Alaska 2013).
Assisted-living facilities
Ala.—Ex parte Williamson, 907 So. 2d 407 (Ala. 2004), as modified on denial of reh'g, (Jan. 14, 2005).
Due process violation
A statute that prohibited employment in elder care facilities of those convicted of certain criminal offenses did not have a real and substantial relationship to the Commonwealth's interest in protecting elderly individuals from victimization and thus violated the employees' due process right to pursue a particular occupation.
Pa.—Nixon v. Com., 576 Pa. 385, 839 A.2d 277 (2003).

3 U.S.—Baldwin v. Daniels, 250 F.3d 943 (5th Cir. 2001).
Ohio—State ex rel. Howell v. Schiele, 85 Ohio App. 356, 40 Ohio Op. 234, 54 Ohio L. Abs. 471, 88 N.E.2d 215 (1st Dist. Hamilton County 1949), judgment aff'd, 153 Ohio St. 235, 41 Ohio Op. 249, 91 N.E.2d 5 (1950).
Tenn.—State v. AAA Aaron's Action Agency Bail Bonds, Inc., 993 S.W.2d 81 (Tenn. Crim. App. 1998).
Bail and surety bondsmen distinguished
Ind.—Allen v. Pavach, 263 Ind. 574, 335 N.E.2d 219 (1975).

4 Ill.—Union Cemetery Ass'n of City of Lincoln v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).
Mass.—Blue Hills Cemetery, Inc. v. Board of Registration in Embalming and Funeral Directing, 379 Mass. 368, 398 N.E.2d 471 (1979).
R.I.—Narragansett Imp. Co. v. Wheeler, 21 A.3d 430 (R.I. 2011).

5 U.S.—Royal Crown Day Care LLC v. Department of Health and Mental Hygiene of City of New York, 746 F.3d 538 (2d Cir. 2014); Ward v. Anderson, 494 F.3d 929 (10th Cir. 2007).
No due process violation
An African American resident's alleged temporary slowdown in his child care business alleged to have occurred due to a police lieutenant's alleged suspicions against the resident for gang activity, evidenced by an inconclusive letter from one customer who withdrew child from childcare "due to allegations regarding the owner," did not rise to the level of a deprivation of the fundamental right to engage in one's chosen occupation as would violate the resident's substantive due process rights.
U.S.—Flowers v. City of Minneapolis, Minn., 478 F.3d 869 (8th Cir. 2007).

6 U.S.—Tomanio v. Board of Regents of University of State of N.Y., 603 F.2d 255 (2d Cir. 1979), judgment rev'd on other grounds, 446 U.S. 478, 100 S. Ct. 1790, 64 L. Ed. 2d 440 (1980).
Ga.—Siegrist v. Iwuagwa, 229 Ga. App. 508, 494 S.E.2d 180 (1997).
La.—State Bd. of Medical Examiners v. Beatty, 220 La. 1, 55 So. 2d 761 (1951).

7 Alaska—Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors, 205 P.3d 326 (Alaska 2009).

8 U.S.—U.S. v. Midwest Fireworks Mfg. Co., Inc., 248 F.3d 563, 56 Fed. R. Evid. Serv. 1347, 2001 FED App. 0145P (6th Cir. 2001) (pyrotechnic powder); U.S. v. Spoerke, 568 F.3d 1236 (11th Cir. 2009) (pipe bomb).

9 Fla.—Lane v. Chiles, 698 So. 2d 260 (Fla. 1997).

10 U.S.—Holt Cargo Systems, Inc. v. Delaware River Port Authority, 165 F.3d 242 (3d Cir. 1999).

11 U.S.—Heffner v. Murphy, 745 F.3d 56 (3d Cir. 2014), cert. denied, 135 S. Ct. 220, 190 L. Ed. 2d 133 (2014) (applying Pennsylvania law); Brown v. Hovatter, 561 F.3d 357 (4th Cir. 2009) (applying Maryland law).
N.C.—North Carolina Bd. of Mortuary Science v. Crown Memorial Park, L.L.C., 162 N.C. App. 316, 590 S.E.2d 467 (2004).
Due process violation in restricting sale of caskets
U.S.—St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013), cert. denied, 134 S. Ct. 423, 187 L. Ed. 2d 281 (2013) (applying Louisiana law).
Prevention of construction
Application to a funeral home of a regulation which prevented it from constructing an additional preparation room on premises directly across the street from the funeral establishment did not result in an unconstitutional taking of property without compensation in violation of due process rights.
Pa.—Parise v. Com., State Bd. of Funeral Directors, 52 Pa. Commw. 80, 415 A.2d 153 (1980).

12 Minn.—Everything Etched, Inc. v. Shakopee Towing, Inc., 634 N.W.2d 450 (Minn. Ct. App. 2001).

13 U.S.—U.S. v. Aldawsari, 683 F.3d 660, 82 Fed. R. Serv. 3d 1074 (5th Cir. 2012).

14 U.S.—LensCrafters, Inc. v. Robinson, 403 F.3d 798, 2005 FED App. 0174P (6th Cir. 2005).

Tenn.—Tennessee Bd. of Dispensing Opticians v. Eyear Corp., 218 Tenn. 60, 400 S.W.2d 734 (1966).
Tex.—Texas Optometry Bd. v. Lee Vision Center, Inc., 515 S.W.2d 380 (Tex. Civ. App. Eastland 1974), writ refused n.r.e., (Feb. 26, 1975).

15 U.S.—Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800 (W.D. Wis. 2004).

16 Ga.—Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 608 S.E.2d 639 (2005).
Kan.—C.M. Showroom, Inc. v. Boes, 23 Kan. App. 2d 647, 933 P.2d 793 (1997).

17 U.S.—Merrifield v. Lockyer, 547 F.3d 978 (9th Cir. 2008) (applying California law).

18 U.S.—Emory v. United Air Lines, Inc., 720 F.3d 915 (D.C. Cir. 2013), cert. denied, 134 S. Ct. 1540, 188 L. Ed. 2d 556 (2014) and cert. denied, 134 S. Ct. 1520, 188 L. Ed. 2d 451 (2014).

19 Mo.—Kansas City Premier Apartments, Inc. v. Missouri Real Estate Com'n, 344 S.W.3d 160 (Mo. 2011).

20 N.H.—Matter of Bloomfield, 166 N.H. 475, 98 A.3d 483 (2014).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

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Research References

A.L.R. Library

A.L.R. Index, Carriers
A.L.R. Index, Constitutional Law
A.L.R. Index, Due Process
A.L.R. Index, Fifth Amendment
A.L.R. Index, Fourteenth Amendment
A.L.R. Index, Police Power
West's A.L.R. Digest, Constitutional Law 4260, 4360 to 4372, 4374, 4446

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

1. Private Corporations

§ 2270. Regulation of private corporations, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4446

Reasonable and appropriate regulation of private corporations do not violate the due process rights of the regulated corporations.

The reasonable regulation by a state, pursuant to its police power, of private corporations is not violative of the Due Process Clause of the Fourteenth Amendment,[1] and the amendment or repeal of a corporate charter does not of itself constitute a violation of the guaranty of due process of law,[2] particularly where no property right is involved.[3]

Unreasonable regulation of corporations, on the other hand, may be void as a deprivation of the property of a corporation[4] or of its stockholders[5] without due process of law; and accordingly, due process may be violated, in particular circumstances, by legislative charter amendments which deprive corporations of substantial property rights[6] or by a corporate charter revocation without a showing that the charter is injurious to the citizens of the state.[7]

Moreover, the denial of an application for a corporate charter must comply with the due process requirements of the Fourteenth Amendment,[8] and the power to amend or repeal a corporate charter may not be exercised so as to deprive the corporation of its property without such procedure as constitutes due process.[9]

Challenges on due process grounds to the regulation of corporations have been raised and adjudicated with respect to various matters, including requirements that corporations file annual reports[10] and produce, on notice, their books and papers,[11] charter revocations[12] and reinstatements,[13] land sales,[14] stock reclassifications,[15] the election of corporate directors,[16] corporate insolvency,[17] dissolution and liquidation,[18] and corporate mergers.[19]

Footnotes

1 N.M.—Westland Development Co. v. Saavedra, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141 (1969).
Statutes of general applicability
Statutes or ordinances of general applicability may condition or even prohibit the right to conduct a business without running afoul of procedural due process.
U.S.—Jones v. Air Line Pilots Ass'n, 713 F. Supp. 2d 29, 68 A.L.R. Fed. 2d 651 (D.D.C. 2010).

2 Iowa—Hearth Corp. v. C-B-R Development Co., Inc., 210 N.W.2d 632 (Iowa 1973).
Md.—Board of Regents of University of Md. v. Trustees of Endowment Fund of University of Md., 206 Md. 559, 112 A.2d 678 (1955).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).
N.M.—Westland Development Co. v. Saavedra, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141 (1969).

3 N.Y.—In re Mt. Sinai Hospital, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

4 U.S.—Chicago, R.I. & P. Ry. Co. v. U.S., 284 U.S. 80, 52 S. Ct. 87, 76 L. Ed. 177 (1931).

5 Ohio—Opdyke v. Security Sav. & Loan Co., 157 Ohio St. 121, 47 Ohio Op. 97, 105 N.E.2d 9 (1952).
Va.—Fein v. Lanston Monotype Mach. Co., 196 Va. 753, 85 S.E.2d 353 (1955).

6 Ill.—Western Foundry Co. v. Wicker, 335 Ill. App. 106, 80 N.E.2d 548 (1st Dist. 1948), rev'd in part on other grounds, 403 Ill. 260, 85 N.E.2d 722, 8 A.L.R.2d 878 (1949).
N.Y.—Breslav v. New York & Queens Elec. Light & Power Co., 249 A.D. 181, 291 N.Y.S. 932 (2d Dep't 1936), aff'd, 273 N.Y. 593, 7 N.E.2d 708 (1937).
N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).
Okla.—Yukon Mill & Grain Co. v. Vose, 1949 OK 43, 201 Okla. 376, 206 P.2d 206 (1949).

7 Ala.—Opinion of the Justices, 373 So. 2d 290 (Ala. 1979).

8 U.S.—Smith v. Ladner, 288 F. Supp. 66 (S.D. Miss. 1968).

9 U.S.—Chicago, M. & St. P. R. Co. v. State of Wis., 238 U.S. 491, 35 S. Ct. 869, 59 L. Ed. 1423 (1915).
N.Y.—People v. Volunteer Rescue Army, 262 A.D. 237, 28 N.Y.S.2d 994 (2d Dep't 1941).

10 U.S.—Cole v. George, 10 Alaska 325, 132 F.2d 502 (C.C.A. 9th Cir. 1942).

11 U.S.—Consolidated Rendering Co. v. State of Vt., 207 U.S. 541, 28 S. Ct. 178, 52 L. Ed. 327 (1908).

12 Ala.—Opinion of the Justices, 373 So. 2d 293 (Ala. 1979).

13 Tenn.—State ex rel. Shriver v. Tennessee Land and Development Co., Inc., 585 S.W.2d 608 (Tenn. 1979).

14 U.S.—Bridgeport Hydraulic Co. v. Council on Water Co. Lands of State of Conn., 453 F. Supp. 942 (D. Conn. 1977), judgment aff'd, 439 U.S. 999, 99 S. Ct. 606, 58 L. Ed. 2d 674 (1978).

15 Ill.—Teschner v. Chicago Title & Trust Co., 59 Ill. 2d 452, 322 N.E.2d 54 (1974).

16 Cal.—Morrical, v. Rogers, 220 Cal. App. 4th 438, 163 Cal. Rptr. 3d 156 (1st Dist. 2013), review denied, (Jan. 21, 2014).

17 Cal.—Caminetti v. Pacific Mut. Life Ins. Co. of Cal., 22 Cal. 2d 344, 139 P.2d 908 (1943).
Mass.—Brown v. Boston & M.R.R., 233 Mass. 502, 124 N.E. 322 (1919).

18 Mass.—Delaware & Hudson Co. v. Boston R. R. Holding Co., 323 Mass. 282, 81 N.E.2d 553 (1948).

19 U.S.—Goldberg v. Arrow Electronics, Inc., 512 F.2d 1258 (2d Cir. 1975).

Va.—Metro Van & Storage Co., Inc. v. Com., 216 Va. 544, 221 S.E.2d 127 (1976).

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XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

1. Private Corporations

§ 2271. Foreign corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4446

The right of a state to exclude or regulate foreign corporations does not extend to support statutes which, in their operation, deprive such corporations of property without due process of law.

The right of a state to exclude or regulate foreign corporations does not extend to support statutes which, in their operation, deprive such corporations of property without due process of law.[1] However, due process does not absolutely deny to a state the power to bar a foreign corporation from acquiring or holding property,[2] or from doing business,[3] within the state, or to determine and enforce conditions on which foreign corporations will be permitted to transact business within the state.[4]

Accordingly, due process does not entitle foreign corporations to do business or maintain suits in a state without being first authorized to do so or without complying with the terms prescribed by such state.[5] The right of a foreign corporation to extend its business into a state, being dependent on the consent of the state, is not property of which it cannot be deprived without due process of law,[6] and the fact that a foreign corporation is engaged solely in interstate commerce does not prevent it from being amenable to the laws of a state within which it is "doing business."[7] Moreover, the Due Process Clause of the Fourteenth

Amendment is not violated by the application to a foreign corporation of a regulatory statute of a state in which such foreign corporation solicits extensively by mail and whose market it exploits.[8]

The revocation of permission to do business in the state because the statutory conditions of such permission have been violated is not a deprivation of property without due process of law,[9] and it has frequently been decided that the enforcement of statutes enacted under the police power forfeiting the right of foreign corporations to continue in business in a state, although disastrous in consequences to the corporation, does not deprive them of property without due process of law.[10]

The regulation by a state of an out-of-state charitable corporation, whose only contact with the regulating state and its residents is by mail, comports with the Due Process Clause of the Fourteenth Amendment.[11]

Footnotes

1 Mont.—Chicago, M., St. P. & P.R. Co. v. Harmon, 89 Mont. 1, 295 P. 762 (1931).
Wyo.—Equitable Life Assur. Soc. of U.S. v. Thulemeyer, 49 Wyo. 63, 52 P.2d 1223 (1935).

2 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).
N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).

3 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).
Ohio—In re Emery, 59 Ohio App. 2d 7, 13 Ohio Op. 3d 44, 391 N.E.2d 746, 9 A.L.R.4th 1214 (1st Dist. Hamilton County 1978).

4 Ark.—E. E. Morgan Co. v. State, for Use and Benefit of Phillips County, 202 Ark. 404, 150 S.W.2d 736 (1941).
Ga.—Cooper Co. of Gainesville v. State, 187 Ga. 497, 1 S.E.2d 436 (1939).

5 U.S.—Munday v. Wisconsin Trust Co., 252 U.S. 499, 40 S. Ct. 365, 64 L. Ed. 684 (1920).
Ala.—Fidelity & Deposit Co. of Maryland v. Goodwyn, 231 Ala. 44, 163 So. 341 (1935).

6 U.S.—National Council, Junior Order United American Mechanics of U.S. v. State Council of Virginia, Junior Order United American Mechanics of Virginia, 203 U.S. 151, 27 S. Ct. 46, 51 L. Ed. 132 (1906).

7 Pa.—Shambe v. Delaware & H. R. Co., 288 Pa. 240, 135 A. 755 (1927).

8 U.S.—Travelers Health Ass'n v. Com. of Va. ex rel. State Corp. Com'n, 339 U.S. 643, 70 S. Ct. 927, 94 L. Ed. 1154 (1950).
N.Y.—Aldens, Inc. v. Tully, 49 N.Y.2d 525, 427 N.Y.S.2d 580, 404 N.E.2d 703 (1980).

9 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).
Miss.—State v. Louisville & N.R. Co., 97 Miss. 35, 51 So. 918 (1910), error overruled on other grounds, 97 Miss. 35, 53 So. 454 (1910).

10 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).
Miss.—State v. Louisville & N.R. Co., 97 Miss. 35, 51 So. 918 (1910), error overruled on other grounds, 97 Miss. 35, 53 So. 454 (1910).

11 Pa.—Com. v. National Federation of the Blind, 18 Pa. Commw. 291, 335 A.2d 832 (1975), judgment aff'd, 471 Pa. 529, 370 A.2d 732 (1977).

16D C.J.S. Constitutional Law § 2272

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

1. Private Corporations

§ 2272. Investigation by regulatory authority

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4260

The investigation of a corporation by a regulatory authority does not violate due process where it is based on a reasonable belief that the corporation under investigation has violated a law.

The investigation of a corporation by a regulatory authority does not violate due process where it is based on a reasonable belief that the corporation under investigation has violated a law.[1] Due process rights have also been found to afford no protection with respect to conjectural allegations of harm in the form of collateral consequences of authorized investigations,[2] such as the improper disclosure of documents lawfully obtained,[3] or a potential business destruction.[4]

However, investigations conducted by a regulatory authority which involve personal liberty and property interests must comply with recognized standards of due process and fundamental fairness.[5] For example, the exclusion of relevant evidence in an investigation of alleged corporate improprieties violates due process[6] and so does the application of an order to a party which has not been accorded either notice or a hearing with respect to the investigation from which the order emanates.[7]

Footnotes

1 U.S.—Atorie Air, Inc. v. F.A.A. of U.S. Dept. of Transp., 942 F.2d 954 (5th Cir. 1991).
N.Y.—Gardner v. Lefkowitz, 97 Misc. 2d 806, 412 N.Y.S.2d 740 (Sup 1978).
Lack of property interest
Landowners lacked a protected property interest in conducting or doing business, and thus, state officials' entry onto the landowners' premises to perform investigations and remedial work to clean up hazardous waste, which allegedly interfered with the landowners' business operations, did not violate the landowners' procedural due process rights, without showing that the state action deprived the landowners of actual business assets.
U.S.—Murtaugh v. New York, 810 F. Supp. 2d 446 (N.D. N.Y. 2011), appeal dismissed, (2nd Circ. 14-233) (Apr. 16, 2014).

2 U.S.—Securities and Exchange Commission v. OKC Corp., 474 F. Supp. 1031 (N.D. Tex. 1979).
Defamatory statements
A property owner's allegation that he suffered harm to his business as the result of town officials' allegedly defamatory statements that he was "a law-breaker," "not a real farmer," and "paid off his wetland expert" was insufficient to plead the state-imposed burden, as required to establish a due process claim.
U.S.—Rankel v. Town of Somers, 999 F. Supp. 2d 527 (S.D. N.Y. 2014).

3 U.S.—Jaymar-Ruby, Inc. v. F.T.C., 496 F. Supp. 838 (N.D. Ind. 1980), aff'd, 651 F.2d 506 (7th Cir. 1981).

4 U.S.—Odessky v. F.T.C., 471 F. Supp. 1267 (D.D.C. 1979).

5 Me.—Berry v. Maine Public Utilities Commission, 394 A.2d 790 (Me. 1978).

6 Me.—Berry v. Maine Public Utilities Commission, 394 A.2d 790 (Me. 1978).

7 U.S.—City of Dallas, Tex. v. Southwest Airlines Co., 371 F. Supp. 1015 (N.D. Tex. 1973), judgment aff'd, 494 F.2d 773 (5th Cir. 1974).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

2. Carriers

a. In General

§ 2273. Power of government to regulate carriers, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4360

The power of the federal and state governments to regulate carriers is subject to due process guaranties, and a regulation so arbitrary or unreasonable as to infringe the right of ownership violates such guaranties.

Due process guaranties do not preclude the regulation of common carriers by the states acting within their police power for the purpose of protecting the public against danger, inconvenience, injustice, and oppression;[1] and state commissions may be created with power to enforce regulations and to supplement them with other regulations of an administrative character.[2] Moreover, to the extent that they are engaged in interstate commerce, common carriers are also subject to similar regulation by Congress or by governmental agencies duly authorized by it[3] which is also subject to the constitutional provision that no person shall be deprived of property without due process of law.[4]

The test of the validity of such regulations, under the due process provisions, is that of reasonableness, and any regulation, whether imposed by statute, ordinance, or executive order, is void if it is so arbitrary or unreasonable as to become an infringement on the right of ownership.[5]

The cost of complying with a regulation is ordinarily an element properly to be considered in determining whether the law imposing it is arbitrary and repugnant to the due process provision.[6] Nevertheless, the mere fact that a reasonable regulation imposes a burden or expense on a common carrier,[7] or subjects it to loss or inconvenience,[8] is not ordinarily sufficient, of itself, to render it void. Even the enforcement of uncompensated obedience to a regulation issued in the exercise of the police power is not a taking of property without due process,[9] and the imposition of otherwise legitimate burdens on a common carrier corporation is not invalid merely because the permitted rate does not allow an adequate return.[10]

However, if the power of regulation is exercised in such an arbitrary or unreasonable manner as to prevent a common carrier from obtaining a fair return on the property invested in the public service, the due process guaranty is violated.[11]

A private carrier cannot, by mere legislative command, be converted, against its will, into a common carrier consistent with the due process guaranty.[12] Nevertheless, it is equally well settled that regulations may be imposed on each of these classes considered individually, and it does not follow that regulations appropriately imposed on the business of a common carrier may not also be appropriate to the business of a contract carrier.[13]

Footnotes

1 U.S.—Chicago, R.I. & P. Ry. Co. v. U.S., 284 U.S. 80, 52 S. Ct. 87, 76 L. Ed. 177 (1931).
Fla.—Atlantic Coast Line R. Co. v. State, 106 Fla. 278, 143 So. 255 (1932).
N.J.—Pennsylvania R. Co. v. Department of Public Utilities, Bd. of Public Utility Com'rs, 14 N.J. 411, 102 A.2d 618 (1954).
S.C.—Ford v. Atlantic Coast Line R. Co., 169 S.C. 41, 168 S.E. 143 (1932), aff'd, 287 U.S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933).

2 U.S.—Mississippi Railroad Commission v. Mobile & O.R. Co., 244 U.S. 388, 37 S. Ct. 602, 61 L. Ed. 1216 (1917); Los Angeles Ry. Corp. v. Railroad Commission of Cal., 29 F.2d 140 (S.D. Cal. 1928), aff'd, 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929).

3 U.S.—Valvoline Oil Co. v. U.S., 308 U.S. 141, 60 S. Ct. 160, 84 L. Ed. 151 (1939); American Trucking Ass'ns v. U.S., 101 F. Supp. 710 (N.D. Ala. 1951), judgment aff'd, 344 U.S. 298, 73 S. Ct. 307, 97 L. Ed. 337 (1953); I. C. C. v. Appleyard, 371 F. Supp. 168 (M.D. N.C. 1974), judgment aff'd, 513 F.2d 575 (4th Cir. 1975).

4 U.S.—U.S. v. Chicago, M., St. P. & P.R. Co., 282 U.S. 311, 51 S. Ct. 159, 75 L. Ed. 359 (1931).
Fla.—Atlantic Coast Line R. Co. v. State, 106 Fla. 278, 143 So. 255 (1932).
Mo.—Lightfoot v. City of Springfield, 361 Mo. 659, 236 S.W.2d 348 (1951).
Pa.—Town Development, Inc. v. Pennsylvania Public Utility Commission, 50 Pa. Commw. 104, 411 A.2d 1317 (1980).

5 U.S.—Chicago, R.I. & P. Ry. Co. v. U.S., 284 U.S. 80, 52 S. Ct. 87, 76 L. Ed. 177 (1931); Autotronic Systems, Inc. v. City of Coeur D'Alene, 527 F.2d 106 (9th Cir. 1975).
Pa.—Pennsylvania R. Co. v. Driscoll, 330 Pa. 97, 198 A. 130 (1938).

6 U.S.—Missouri Pac. R. Co. v. Norwood, 283 U.S. 249, 51 S. Ct. 458, 75 L. Ed. 1010 (1931), modified on other grounds, 283 U.S. 809, 51 S. Ct. 652, 75 L. Ed. 1428 (1931).
Okla.—Missouri-Kansas-Texas R. Co. v. State, 1941 OK 340, 189 Okla. 685, 119 P.2d 835 (1941).
Wis.—Chicago, M., St. P. & P. Ry. Co. v. Public Service Commission, 260 Wis. 212, 50 N.W.2d 416 (1951).

7 U.S.—Valvoline Oil Co. v. U.S., 308 U.S. 141, 60 S. Ct. 160, 84 L. Ed. 151 (1939); Missouri-Kansas-Texas R. Co. v. Williamson, 36 F. Supp. 607 (W.D. Okla. 1941).

8 Fla.—State v. Florida East Coast Ry. Co., 57 Fla. 522, 49 So. 43 (1909).
Wis.—Chicago, M., St. P. & P. Ry. Co. v. Public Service Commission, 260 Wis. 212, 50 N.W.2d 416 (1951).

9 U.S.—New Orleans Public Service v. City of New Orleans, 281 U.S. 682, 50 S. Ct. 449, 74 L. Ed. 1115 (1930).

10 U.S.—Ft. Smith Light & Traction Co. v. Board of Imp. of Paving Dist. No. 16 of City of Ft. Smith, Ark., 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).
As to the right to a fair return, see § 2286.

11 U.S.—Mississippi Railroad Commission v. Mobile & O.R. Co., 244 U.S. 388, 37 S. Ct. 602, 61 L. Ed. 1216 (1917); Los Angeles Ry. Corp. v. Railroad Commission of Cal., 29 F.2d 140 (S.D. Cal. 1928), aff'd, 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929).

12 U.S.—State of Washington ex rel. Stimson Lumber Co. v. Kuykendall, 275 U.S. 207, 48 S. Ct. 41, 72 L. Ed. 241 (1927).
Pa.—Dairymen's Co-Operative Sales Ass'n v. Public Service Commission of Pennsylvania, 318 Pa. 381, 177 A. 770, 98 A.L.R. 218 (1935).
Wash.—Big Bend Auto Freight v. Ogers, 148 Wash. 521, 269 P. 802 (1928).

13 U.S.—Deppman v. Murray, 5 F. Supp. 661 (W.D. Wash. 1934).
Colo.—Bushnell v. People, 92 Colo. 174, 19 P.2d 197 (1933).
Ga.—McEntyre v. Georgia Public Service Commission, 176 Ga. 398, 168 S.E. 246 (1933).
Me.—State v. King, 135 Me. 5, 188 A. 775 (1936).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

2. Carriers

a. In General

§ 2274. Notice and hearing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4360

Ordinarily, notice and an opportunity to be heard are necessary to meet the requirements of due process with respect to the imposition of regulations affecting carriers.

Due process of law with respect to regulations imposed on carriers generally requires notice of the special burden or duty which the regulating body seeks to impose and an opportunity to be heard on the rightfulness of the exactions.[1] The notice, to meet general due process requirements, must be reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.[2]

However, there is no necessity that the statute under which the regulatory body acts must expressly provide for notice,[3] nor is notice required for a hearing before the adoption of regulations affecting common carriers,[4] where a reasonable opportunity to be heard,[5] or a resort to the courts,[6] is otherwise provided.

Due process is afforded a carrier if there is an opportunity for it to be heard at any time before judgment or the order of a regulatory body is entered,[7] and the issuance of an interim order, in the regulation of a common carrier, before an opportunity is afforded it to present evidence, does not necessarily violate due process of law.[8]

Notices published in the Federal Register are legally sufficient notice of agency proceedings to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance except those who are legally entitled to personal notice.[9] In addition, procedural due process may not require a formal hearing,[10] such as where there are no factual questions to resolve[11] or where ample opportunity has already been provided and formal procedures would reduce the chance of error.[12]

A denial of a rehearing to a common carrier, in particular circumstances, does not violate due process of law, where the requirement of the constitutional guaranty has been otherwise satisfied,[13] and the refusal on the part of a body regulating common carriers to take new evidence in order to bridge the gap created between the time the record in a particular matter was closed and the time an administrative decision in the same matter is promulgated is not a denial of due process.[14]

While in emergencies the interests of safety require that prompt prohibitory action be taken without the benefit of hearing or elaborate findings, due process mandates that any corrective action to be taken by a carrier be identified with particularity by the regulatory authority[15] and that a hearing be granted to the carrier at a meaningful time in a meaningful manner.[16]

Footnotes

1 Ala.—Alabama Public Service Commission v. Redwing Carriers, Inc., 281 Ala. 111, 199 So. 2d 653 (1967).
Ind.—Town of Walkerton v. New York, C. & St. L. R. Co., 215 Ind. 206, 18 N.E.2d 799 (1939).
N.D.—Hentz Truck Line, Inc., Roseville, Minn. v. Elkin, 294 N.W.2d 774 (N.D. 1980).
Wash.—State v. Cater's Motor Freight System, 27 Wash. 2d 661, 179 P.2d 496 (1947).

2 Colo.—Hassler & Bates Co. v. Public Utilities Commission, 168 Colo. 183, 451 P.2d 280 (1969).
R.I.—East Greenwich Fire Dist. v. Penn Central Co., 111 R.I. 303, 302 A.2d 304 (1973).

3 S.C.—Shealey v. Seaboard Air Line Ry. Co., 131 S.C. 144, 126 S.E. 622 (1924).
Wash.—State v. Cater's Motor Freight System, 27 Wash. 2d 661, 179 P.2d 496 (1947).

4 S.C.—Caughman v. Columbia, N. & L. R. Co., 82 S.C. 418, 64 S.E. 240 (1909).
Wash.—State v. Cater's Motor Freight System, 27 Wash. 2d 661, 179 P.2d 496 (1947).

5 U.S.—Suffin v. Pennsylvania R. Co., 276 F. Supp. 549 (D. Del. 1967), judgment aff'd, 396 F.2d 75 (3d Cir. 1968).

6 U.S.—Vandalia R. Co. v. Public Service Com'n of Ind., 242 U.S. 255, 37 S. Ct. 93, 61 L. Ed. 276 (1916).
Wash.—State v. Cater's Motor Freight System, 27 Wash. 2d 661, 179 P.2d 496 (1947).

7 U.S.—McLean Trucking Co. v. Occupational Safety and Health Review Com'n, 503 F.2d 8 (4th Cir. 1974); Midwestern Gas Transmission Co. v. F.E.R.C., 589 F.2d 603 (D.C. Cir. 1978).
Wash.—State v. Cater's Motor Freight System, 27 Wash. 2d 661, 179 P.2d 496 (1947).

8 Ill.—People ex rel. Pennsylvania R. Co. v. Illinois Commerce Commission, 40 Ill. 2d 58, 237 N.E.2d 514 (1968).

9 U.S.—State of California ex rel. Lockyer v. F.E.R.C., 329 F.3d 700 (9th Cir. 2003).
No procedural due process violation
Because federal speed limits for Class Three railroad tracks were published in the Code of Federal Regulations, there was an ascertainable standard for determining whether a train's speed on a portion of Class Three track was excessive when it collided with a motorist's car at a railroad crossing, and therefore there was no procedural due process violation.
Wash.—Veit, ex rel. Nelson v. Burlington Northern Santa Fe Corp., 171 Wash. 2d 88, 249 P.3d 607 (2011).

10 U.S.—Continental Air Lines, Inc. v. Dole, 784 F.2d 1245 (5th Cir. 1986); Air North America v. Department of Transp., 937 F.2d 1427 (9th Cir. 1991).

11 U.S.—Air North America v. Department of Transp., 937 F.2d 1427 (9th Cir. 1991).

12 U.S.—Continental Air Lines, Inc. v. Dole, 784 F.2d 1245 (5th Cir. 1986).

13 U.S.—Illinois Cent. R. Co. v. Norfolk & W. Ry. Co., 385 U.S. 57, 87 S. Ct. 255, 17 L. Ed. 2d 162 (1966).

14 U.S.—U.S. v. I. C. C., 396 U.S. 491, 90 S. Ct. 708, 24 L. Ed. 2d 700 (1970).

15 U.S.—Louisville & N. R. Co. v. Sullivan, 471 F. Supp. 469 (D.D.C. 1979).

16 U.S.—Louisville & N. R. Co. v. Sullivan, 471 F. Supp. 469 (D.D.C. 1979).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

2. Carriers

a. In General

§ 2275. Service termination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4360

It would violate due process to compel a common carrier to continue the operation of its business at a loss, or in the absence of its consent or a contract to do so if such compulsion lacks a rational basis.

It would violate due process to compel a common carrier to continue the operation of its business at a loss,[1] indefinitely,[2] or in the absence of its consent or a contract to do so,[3] if such compulsion lacks a rational basis.[4] It does not follow, however, that it is not within the constitutional power of a state to refuse to permit a partial abandonment of its charter obligations or franchise, even though the part sought to be abandoned is not profitable,[5] where a constitution does not confer on a common carrier the right to enjoy a franchise and to escape from the burdens incident to its use.[6] Moreover, even where there is no charter obligation, refusal to permit a partial abandonment of service is not necessarily so unreasonable as to fall under the condemnation of the Due Process Clause.[7]

Nevertheless, the regulatory power of a state to forbid the abandonment of any part of its system or service by a common carrier is subject to the limitation that it must not be exercised arbitrarily[8] and that the order requiring continued operation must not be unreasonable.[9] Accordingly, a violation of due process occurs upon the refusal to permit the discontinuance of service, operated at a loss, which is beyond the company's absolute duty and serves merely public convenience,[10] or which is not required by either public convenience or necessity.[11]

A termination of service which is part of a rational attempt to preserve and revitalize existing service has been held not to deny substantive due process of law to citizens who are affected by the termination.[12]

Footnotes

1 Mich.—Chicago & N.W. Ry. Co. v. Michigan Public Service Commission, 329 Mich. 432, 45 N.W.2d 520 (1951).
N.J.—Pennsylvania-Reading Seashore Lines v. Board of Public Utility Com'rs, 5 N.J. 114, 74 A.2d 265 (1950).
Va.—Washington and Old Dominion Users Ass'n v. Washington and Old Dominion R. R., 208 Va. 1, 155 S.E.2d 322 (1967).

2 U.S.—Gibbons v. U.S., 660 F.2d 1227 (7th Cir. 1981).
Va.—Washington and Old Dominion Users Ass'n v. Washington and Old Dominion R. R., 208 Va. 1, 155 S.E.2d 322 (1967).

3 Mich.—Chicago & N.W. Ry. Co. v. Michigan Public Service Commission, 329 Mich. 432, 45 N.W.2d 520 (1951).
N.J.—Pennsylvania-Reading Seashore Lines v. Board of Public Utility Com'rs, 5 N.J. 114, 74 A.2d 265 (1950).

4 U.S.—Quincy College & Seminary Corp. v. Burlington Northern, Inc., 328 F. Supp. 808 (N.D. Ill. 1971), judgment aff'd, 405 U.S. 906, 92 S. Ct. 939, 30 L. Ed. 2d 777 (1972); Brooklyn Eastern Dist. Terminal v. U.S., 302 F. Supp. 1095 (E.D. N.Y. 1969).

5 U.S.—Brooklyn Eastern Dist. Terminal v. U.S., 302 F. Supp. 1095 (E.D. N.Y. 1969).
Mont.—Chicago, M., St. P. & P. R. Co. v. Board of R. R. Com'rs, 126 Mont. 568, 255 P.2d 346 (1953).
Vt.—Town of West Rutland v. Rutland Ry., Light & Power Co., 98 Vt. 508, 129 A. 303 (1925).

6 Vt.—Town of West Rutland v. Rutland Ry., Light & Power Co., 98 Vt. 508, 129 A. 303 (1925).

7 U.S.—Southern Ry. Co. v. South Carolina Public Service Commission, 31 F. Supp. 707 (E.D. S.C. 1940).

8 U.S.—Chicago, B. & Q. R. Co. v. Illinois Commerce Commission, 82 F. Supp. 368 (N.D. Ill. 1949).

9 U.S.—Crawford v. Duluth St. Ry. Co., 60 F.2d 212 (C.C.A. 7th Cir. 1932).
S.C.—Blease v. Charleston & W.C. Ry. Co., 146 S.C. 496, 144 S.E. 233 (1928).

10 Okla.—St. Louis-San Francisco R. Co. v. State, 1950 OK 294, 204 Okla. 432, 230 P.2d 709 (1950); St. Louis-San Francisco Ry. Co. v. State, 1955 OK 126, 283 P.2d 519 (Okla. 1955).

11 U.S.—Chicago, B. & Q. R. Co. v. Illinois Commerce Commission, 82 F. Supp. 368 (N.D. Ill. 1949).
Mich.—Chicago & N.W. Ry. Co. v. Michigan Public Service Commission, 329 Mich. 432, 45 N.W.2d 520 (1951).
N.J.—Pennsylvania-Reading Seashore Lines v. Board of Public Utility Com'rs, 5 N.J. 114, 74 A.2d 265 (1950).

12 U.S.—Quincy College & Seminary Corp. v. Burlington Northern, Inc., 328 F. Supp. 808 (N.D. Ill. 1971), judgment aff'd, 405 U.S. 906, 92 S. Ct. 939, 30 L. Ed. 2d 777 (1972).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

2. Carriers

b. Particular Types of Carriers

§ 2276. Railroads

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4363

The rules governing the application of the due process guaranty to common carriers are particularly applicable to railroads and have been applied to a great variety of regulations affecting railroads.

The principles previously set forth,[1] dealing with the effect of the due process requirements on common carriers, have been applied to railroads.[2]

In relation to the abandonment of rail lines, courts have held that due process is not violated by not giving notice to a company who only ships a small percentage of its business via the line in question[3] or by reopening a previously dismissed proceeding.[4] However, where a state statute on the abandonment of railway rights contains no provision for a hearing, it violates due process.[5]

The discontinuance of a railroad service pursuant to a congressional authorization has been held to be not so grievous a loss as to require compliance with procedural due process.[6] Accordingly, a hearing is not required to be held where a railroad,

which carries both interstate and intrastate business, discontinues its service pursuant to congressional authorization,[7] as such an authorization poses no threat to life, liberty, or property and does not impair the Fifth Amendment rights of the railroad's users.[8] On the other hand, state authorization for the termination of a railroad service has been held to be sufficient state action to trigger the procedural due process protection of the Fourteenth Amendment,[9] and, accordingly, consumers affected by a state termination of railroad service have been held to be entitled to a notice and a hearing prior to the termination.[10] A legislative proscription of judicial review of a final administrative agency action pertaining to the discontinuance of a particular service by a railroad has been held not to violate due process of law.[11]

Unreasonable safety requirements[12] or other arbitrary and unreasonable requirements as to the construction or maintenance of private crossings,[13] overpasses or underpasses,[14] or cattle guards,[15] or as to the number of persons required to compose a train crew,[16] have been held void.

Footnotes

1 §§ 2273, 2274.

2 U.S.—National R.R. Passenger Corp. v. Atchison Topeka and Santa Fe Ry. Co., 470 U.S. 451, 105 S. Ct. 1441, 84 L. Ed. 2d 432 (1985) (no violation of Fifth Amendment due process).
No due process violation of passenger
Allegations that a railroad police officer treated train passenger roughly when the officer handcuffed and detained the passenger under a mistaken belief that the passenger had assaulted another passenger were insufficient to state a claim for a substantive due process violation.
U.S.—Spencer v. National R.R. Passenger Corp., 141 F. Supp. 2d 1147 (N.D. Ill. 2001).

3 U.S.—Needville Cotton Warehouse, Inc. v. I.C.C., 845 F.2d 550 (5th Cir. 1988).

4 U.S.—Simmons v. I.C.C., 784 F.2d 242 (7th Cir. 1985).

5 U.S.—Penn Cent. Corp. v. U.S. R.R. Vest Corp., 955 F.2d 1158 (7th Cir. 1992).

6 U.S.—Coleman v. Consolidated Rail Corp., 449 F. Supp. 621 (N.D. Ohio 1977).

7 U.S.—Pennsylvania R. Co. v. Sharfsin, 369 F.2d 276 (3d Cir. 1966); Howell v. U.S., 302 F. Supp. 772 (E.D. Va. 1969).

8 U.S.—State of N.J. v. U.S., 168 F. Supp. 324 (D.N.J. 1958), aff'd, 359 U.S. 27, 79 S. Ct. 607, 3 L. Ed. 2d 625 (1959) and judgment aff'd, 359 U.S. 27, 79 S. Ct. 603, 3 L. Ed. 2d 625 (1959).

9 Ill.—I. Erlichman Co., Inc. v. Illinois Commerce Commission, 92 Ill. App. 3d 1091, 48 Ill. Dec. 448, 416 N.E.2d 721 (3d Dist. 1981).

10 Ill.—I. Erlichman Co., Inc. v. Illinois Commerce Commission, 92 Ill. App. 3d 1091, 48 Ill. Dec. 448, 416 N.E.2d 721 (3d Dist. 1981).

11 U.S.—Quincy College & Seminary Corp. v. Burlington Northern, Inc., 328 F. Supp. 808 (N.D. Ill. 1971), judgment aff'd, 405 U.S. 906, 92 S. Ct. 939, 30 L. Ed. 2d 777 (1972).

12 U.S.—Atchison, T. & S. F. Ry. Co. v. La Prade, 2 F. Supp. 855 (D. Ariz. 1933).

13 Mich.—People v. Detroit, G.H. & M. Ry. Co., 79 Mich. 471, 44 N.W. 934 (1890).
Tex.—Bennett v. Gulf, C. & S.F. Ry. Co., 146 S.W. 353 (Tex. Civ. App. Austin 1912).

14 Ill.—People ex rel. City of Chicago v. Illinois Cent. R. Co., 235 Ill. 374, 85 N.E. 606 (1908).

15 S.D.—Dwyer v. Chicago & N.W. Ry. Co., 41 S.D. 535, 171 N.W. 760 (1919).

16 Pa.—Pennsylvania R. Co. v. Driscoll, 336 Pa. 310, 9 A.2d 621 (1939).

16D C.J.S. Constitutional Law § 2277

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§ 2277. Motor carriers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4364

Appropriate and reasonable regulations imposed on motor carriers, whether common or private carriers, do not invade such carriers' constitutional rights under due process.

Appropriate regulations by the state imposed on private corporations engaged in the business of a carrier by motor vehicle do not invade such carriers' constitutional rights under the due process guaranty.[1] To the extent that they are engaged in interstate commerce, motor carriers are also subject to appropriate regulations by Congress or governmental agencies duly authorized by it.[2] This is so particularly where such regulations do not limit, revoke, or change the authority previously granted to such carriers.[3] The federal government and state governments are prohibited, however, from imposing arbitrary or unreasonable regulations on such carriers,[4] or from imposing any regulations in violation of the requirements of procedural due process.[5]

Accordingly, uniform regulations reasonably necessary for the protection of the property of shippers, or the safety and comfort of passengers, or for the safety of other travelers on the highways used by motor carriers do not constitute a denial of due process.[6]

While a state may regulate the use of its highways by private motor carriers or contract carriers, it may not, without doing violence to the due process guaranty, impose on them all of the obligations of common carriers.[7] Furthermore, a state may not bring about this same result by the indirect method of requiring private carriers to become common carriers as a condition precedent to the enjoyment of the privilege of using the streets and highways of the state.[8]

Nevertheless, many regulations properly imposed on common carriers may be and in fact are appropriate to the business of private motor carriers when the latter class is considered independently, and such regulations are not unconstitutional under the due process guaranty.[9]

Footnotes

1 U.S.—Interstate Busses Corp. v. Holyoke St. Ry. Co., 273 U.S. 45, 47 S. Ct. 298, 71 L. Ed. 530 (1927).
Tenn.—McCanless v. Southeastern Greyhound Lines, 178 Tenn. 614, 162 S.W.2d 370 (1942).
Wash.—Elkins v. Schaaf, 4 Wash. 2d 12, 102 P.2d 230 (1940).

2 U.S.—I. C. C. v. Big Sky Farmers and Ranchers Marketing Co-op. of Mont., 321 F. Supp. 79 (C.D. Cal. 1970), order aff'd, 451 F.2d 511 (9th Cir. 1971); Dart Transit Co. v. I. C. C., 110 F. Supp. 876 (D. Minn. 1953), judgment aff'd, 345 U.S. 980, 73 S. Ct. 1138, 97 L. Ed. 1394 (1953).

3 U.S.—U.S. v. Interstate Commerce Commission, 409 U.S. 904, 93 S. Ct. 235, 34 L. Ed. 2d 168 (1972); International Transport, Inc. v. U.S., 337 F. Supp. 985 (W.D. Mo. 1972), judgment aff'd, 409 U.S. 904, 93 S. Ct. 224, 34 L. Ed. 2d 168 (1972) and judgment aff'd, 409 U.S. 904, 93 S. Ct. 235, 34 L. Ed. 2d 168 (1972).
Neb.—Nebraska State Ry. Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

4 Pa.—Philadelphia Rural Transit Co. v. Public Service Commission of Pennsylvania, 103 Pa. Super. 256, 158 A. 589 (1931).

5 Pa.—Armour Transp. Co. v. Pennsylvania Public Utility Commission, 138 Pa. Super. 243, 10 A.2d 86 (1939).

6 U.S.—Hughes v. U.S., 278 F. Supp. 11 (E.D. Pa. 1967).
Pa.—Maurer v. Boardman, 45 Dauph. 341 (Pa. C.P. 1938), aff'd, 336 Pa. 17, 7 A.2d 466 (1939), judgment aff'd, 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940).
Tenn.—McCanless v. Southeastern Greyhound Lines, 178 Tenn. 614, 162 S.W.2d 370 (1942).

7 U.S.—Frost v. Railroad Commission of State of Cal., 271 U.S. 583, 46 S. Ct. 605, 70 L. Ed. 1101, 47 A.L.R. 457 (1926).
Ga.—McEntyre v. Georgia Public Service Commission, 176 Ga. 398, 168 S.E. 246 (1933).
N.Y.—Motor Haulage Co. v. Maltbie, 293 N.Y. 338, 57 N.E.2d 41, 161 A.L.R. 401 (1944).

8 U.S.—Frost v. Railroad Commission of State of Cal., 271 U.S. 583, 46 S. Ct. 605, 70 L. Ed. 1101, 47 A.L.R. 457 (1926).

9 U.S.—Deppman v. Murray, 5 F. Supp. 661 (W.D. Wash. 1934).
Colo.—Bushnell v. People, 92 Colo. 174, 19 P.2d 197 (1933).
Fla.—Stewart v. Mack, 66 So. 2d 811 (Fla. 1953).
Classification as common motor carrier
A statute classifying moving truck companies as fully regulated common motor carriers was not unconstitutionally vague with respect to its use of the term "association" in referencing entities that have "a commercial or financial interest in providing services related to the movement of household goods" as the statute neither forbade nor required any action but merely provided that, before persons may be considered fully regulated common motor carriers, they must also hold themselves out to the public for employment.
Nev.—Fathers & Sons & A Daughter Too v. Transportation Services Authority of Nevada, 124 Nev. 254, 182 P.3d 100 (2008).

End of Document

16D C.J.S. Constitutional Law § 2278

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§ 2278. Motor carriers—Notice and hearing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4364

The satisfaction of procedural due process requirements is essential to the validity of specific orders affecting essential rights.

While a hearing is not always constitutionally required,[1] the satisfaction of procedural due process requirements is essential to the validity of specific orders affecting essential rights.[2] Thus, where a certificate authorizing a motor carrier to operate vests in it a property interest which is protected by constitutional due process safeguards, procedural due process, including the right to a hearing, is applicable to any limits sought to be imposed on the benefits which the certificate bestowed as originally issued.[3] In such cases, notice and a hearing must be accorded,[4] and the right to notice and a hearing is not satisfied unless notice of the time and place of such hearing is given, and an opportunity to be heard and offer testimony at such time and place is accorded,[5] in strict compliance with statutory requirements.[6] Not providing an oral hearing and discovery does not violate the Due Process Clause where the carrier is on notice of the charges through a citation, has the opportunity to present its arguments through written briefs, and the opportunity to present evidence by affidavit.[7]

Notice may be public[8] or made by certified mail if personal service is not required.[9]

Footnotes

1 U.S.—Turner Bros. Trucking Co., Inc. v. I. C. C., 684 F.2d 701 (10th Cir. 1982) (the failure of the Interstate Commerce Commission to provide a hearing to an irregular route motor carrier on a petition for a waiver of ICC regulations governing leasing practices in the trucking industry did not deny the carrier due process).

Impractical to provide hearing

A commercial truck driver's due process rights were not violated by the failure to provide him with a hearing prior to issuing him an out-of-service order for fatigue following a roadside inspection where it would have been impractical to provide some type of hearing officer at a weigh station or roadside area where commercial vehicle and driver inspections were normally conducted, the driver did not suffer a serious loss from being ordered out of service for a period of 10 hours, and there were no potential long-term implications.

U.S.—Owner-Operator Independent Driver Ass'n, Inc. v. Dunaski, 763 F. Supp. 2d 1068 (D. Minn. 2011), amended in part, (Apr. 27, 2011) and adhered to, 812 F. Supp. 2d 994 (D. Minn. 2011).

2 U.S.—U.S. v. Texas & Pac. Motor Transport Co., 340 U.S. 450, 71 S. Ct. 422, 95 L. Ed. 409 (1951).

Ala.—Alabama Public Service Commission v. Redwing Carriers, Inc., 281 Ala. 111, 199 So. 2d 653 (1967).

3 W. Va.—Kisner v. Public Service Commission, 163 W. Va. 565, 258 S.E.2d 586 (1979).

4 U.S.—Lynch v. Public Service Commission of State of Nev., 376 F. Supp. 1033 (D. Nev. 1974).

N.Y.—Gable Transport, Inc. v. State, 29 A.D.3d 1125, 815 N.Y.S.2d 299 (3d Dep't 2006).

Tex.—Highway Transp. Co. v. Southwestern Greyhound Lines, 124 S.W.2d 433 (Tex. Civ. App. Austin 1939), writ refused.

5 Tex.—Highway Transp. Co. v. Southwestern Greyhound Lines, 124 S.W.2d 433 (Tex. Civ. App. Austin 1939), writ refused.

Wash.—Luisi Truck Lines, Inc. v. Washington Utilities and Transp. Commission, 72 Wash. 2d 887, 435 P.2d 654 (1967).

6 Colo.—Public Utilities Commission v. Colorado Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

7 U.S.—Darrell Andrews Trucking, Inc. v. Federal Motor Carrier Safety Admin., 296 F.3d 1120 (D.C. Cir. 2002).

8 Tex.—Airline, Inc. v. Railroad Com'n of Texas, 730 S.W.2d 185 (Tex. App. Austin 1987).

9 Utah—Anderson v. Public Service Com'n of Utah, 839 P.2d 822 (Utah 1992).

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§ 2279. Transportation companies; access to public transportation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4362, 4365 to 4368

Regulations regarding a transportation company must comply with substantive and procedural due process; also, there is a protected property interest under the Due Process Clause in access to public transportation.

Regulations regarding a transportation company must comply with substantive[1] and procedural[2] due process. Due process does not require a presuspension hearing of a driver's taxicab license where the government's interest in protecting the public is greater than the driver's interest in an immediate hearing.[3]

There is a protected property interest under due process in access to public transportation by a transit authority as a common carrier, so long as the individual complies with the transit authority's rules and regulations.[4] Thus, although a transit authority has discretion to make rules governing access to its services, that authority is limited to a set of clearly defined circumstances.[5]

CUMULATIVE SUPPLEMENT

Cases:

State public-transit authority's ban on political advertisements on the sides of city buses served permissible ends, as required for transit authority's restriction on speech to satisfy reasonableness requirement for nonpublic forums under First Amendment's free speech provision, where transit authority sought to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience. U.S. Const. Amend. 1. American Freedom Defense Initiative v. Suburban Mobility Authority for Regional Transportation, 978 F.3d 481 (6th Cir. 2020).

Alleged conduct by municipal airport commission, commissioners and others in manipulating and abusing their authority in order to delay, deter, and injure private air carrier by preventing carrier from obtaining a permit to sell jet fuel at airport could not support substantive due process claim, absent allegations of truly horrendous, conscience-shocking behavior. U.S. Const. Amend. 14. Boston Executive Helicopters, LLC v. Maguire, 196 F. Supp. 3d 134 (D. Mass. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo., 742 F.3d 807 (8th Cir. 2013) (a city's taxi cab permit ordinance was rationally related to the city's purposes of creating incentives to invest in infrastructure and increasing quality in the taxicab industry).
Ga.—Atlanta Taxicab Co. Owners Ass'n, Inc. v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307 (2006) (the city's legitimate interest of promoting and protecting public safety, subjecting taxicab owners to civil sanctions for infractions committed by their drivers, was reasonably necessary).

2 U.S.—Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis, 572 F.3d 502 (8th Cir. 2009) (a hearing was required to be conducted at least once every 24 months to consider whether public convenience and necessity warranted additional taxicab licenses).
Alaska—Patrick v. Municipality of Anchorage, Anchorage Transp. Com'n, 305 P.3d 292 (Alaska 2013).

3 U.S.—Nnebe v. Daus, 644 F.3d 147 (2d Cir. 2011).

4 U.S.—Brown v. Eppler, 725 F.3d 1221 (10th Cir. 2013).

5 U.S.—Brown v. Eppler, 725 F.3d 1221 (10th Cir. 2013).
Identification to board required
Enforcement of a Transportation Security Administration security directive, requiring airline passengers to present identification before boarding and requiring airlines to implement the policy, did not violate the due process rights of an airline passenger, where the directive was not void for vagueness, since it did not subject the passenger to criminal sanctions or threats of prosecution, and the passenger had actual notice of the identification policy since it was posted at the airline ticketing counter.
U.S.—Gilmore v. Gonzales, 435 F.3d 1125 (9th Cir. 2006).

16D C.J.S. Constitutional Law § 2280

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§ 2280. Pipelines

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4371, 4374

Reasonable and appropriate regulations of pipeline carriers are not invalid as a denial of due process.

The imposition of regulatory measures on a common pipeline carrier does not violate due process where such regulations are reasonable, necessary, and appropriate.[1] Unreasonable or arbitrary regulations, however, have not been sustained.[2]

A private pipeline carrier cannot, by mere legislative edict, be compelled to assume the obligations of a common carrier without violating the Due Process Clause,[3] but a pipeline carrier corporation which is a common carrier in everything but form may be compelled to assume the status and obligations of a common carrier.[4]

Failure to provide a pipeline company with adequate notice prior to taking disciplinary action is a deprivation of the pipeline company's constitutional right to due process.[5]

A "paper hearing" procedure affords a company full due process protection, where the company has both notice and the opportunity to be heard before a determination, and the company is entitled to a full evidentiary hearing on identical issues in a proceeding.[6]

Footnotes

1 U.S.—Earth Resources Co. of Alaska v. Federal Energy Regulatory Commission, 617 F.2d 775 (D.C. Cir. 1980).

2 U.S.—Panhandle Eastern Pipe Line Co. v. State Highway Commission of Kansas, 294 U.S. 613, 55 S. Ct. 563, 79 L. Ed. 1090 (1935); Gulf Interstate Gas Co. v. Rapides Parish Police Jury, 115 F. Supp. 746 (W.D. La. 1953).

3 U.S.—Producers' Transp. Co. v. Railroad Commission of State of Cal., 251 U.S. 228, 40 S. Ct. 131, 64 L. Ed. 239 (1920).
Cal.—Associated Pipe Line Co. v. Railroad Commission of Cal., 176 Cal. 518, 169 P. 62 (1917).

4 U.S.—U.S. v. Ohio Oil Co., 234 U.S. 548, 34 S. Ct. 956, 58 L. Ed. 1459 (1914).

5 Ill.—Quantum Pipeline Co. v. Illinois Commerce Com'n, 304 Ill. App. 3d 310, 237 Ill. Dec. 481, 709 N.E.2d 950 (3d Dist. 1999).

6 U.S.—CNG Transmission Corp. v. F.E.R.C., 40 F.3d 1289 (D.C. Cir. 1994).

16D C.J.S. Constitutional Law § 2281

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§ 2281. Public utilities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4370 to 4373

The reasonable regulation of public utility corporations does not violate due process.

The regulation of public utility corporations, such as gas, electric, power, telephone, telegraph, and water companies, does not violate due process[1] where such regulations comply with procedural[2] and reasonable substantive[3] due process requirements. In assessing the constitutionality of a public utility regulation, due process requires a delicate balancing of all interests involved; generally, a regulation will be upheld where the public interest outweighs the inconvenience and expense to the regulated utility[4] and where the administration of regulatory provisions is subject to judicial review.[5] However, there is no right to an evidentiary hearing where the facts are not in dispute.[6]

Accordingly, the due process provision does not preclude a state from requiring a public utility to continue to serve territory covered by a part of its system,[7] or to extend service to territory covered by its franchise,[8] particularly where such requirement is consistent with a utility's charter or franchise[9] or with its statutory obligation.[10]

A state may not, consistent with due process, order an extension of service which is unreasonable,[11] which has not been given proper consideration,[12] or which goes beyond a public utility's undertaking,[13] and the State has no power to compel the continued operation of a public utility at a loss,[14] especially where its owner is willing to and in fact does abandon to the public all of its property which has been devoted to the public use.[15] However, a state may, in a proper case, limit or restrict the operation of public utilities,[16] or reduce the area to be served by them,[17] and the reasonable exercise of public powers of inquiry into the affairs of public utilities is not a violation of the Due Process Clause.[18]

All regulation of public utilities by a state which is arbitrary or which interferes unreasonably with corporate management and control may be said to be violative of the due process provision.[19] Similarly, regulations which would result in depriving the utility of a vested right will generally be considered to violate the guaranty.[20] Furthermore, it is fundamental that property used exclusively in private business cannot be converted into a public utility by mere legislative fiat.[21]

Compliance with procedural due process has been required with respect to various regulatory actions affecting telephone companies, such as the revocation of a certificate of public convenience and necessity[22] or a requirement that a telephone company assist law enforcement agents in tracing telephone calls.[23] However, a Federal Communications Commission order exempting local exchange carriers from a mandatory common-carrier regulation did not violate due process where the Commission fully considered the public interest before eliminating the obligations.[24] Unreasonable and arbitrary regulation of telephone and telegraph companies have been held to be void as violating the due process guaranty.[25]

Footnotes

1 Ga.—Georgia Public Service Commission v. Georgia Power Co., 182 Ga. 706, 186 S.E. 839 (1936).
Mont.—Gallatin Natural Gas Co. v. Public Service Commission, 79 Mont. 269, 256 P. 373 (1927).
N.J.—Eastern New Jersey Power Co. v. Board of Public Utility Com'rs, 6 N.J. Misc. 118, 140 A. 258 (Sup. Ct. 1928).

2 U.S.—Consolidated Aluminum Corp. v. Tennessee Valley Authority, 462 F. Supp. 464 (M.D. Tenn. 1978).
Idaho—Intermountain Gas Co. v. Idaho Public Utilities Commission, 97 Idaho 113, 540 P.2d 775 (1975).
Ill.—Union Elec. Co. v. Illinois Commerce Commission, 39 Ill. 2d 386, 235 N.E.2d 604 (1968).

3 U.S.—Phillips v. Nelson, 108 F.2d 725 (C.C.A. 10th Cir. 1939).
Cal.—Lyon & Hoag v. Railroad Commission, 183 Cal. 145, 190 P. 795, 11 A.L.R. 249 (1920).
Ga.—Georgia Power Co. v. Georgia Public Service Commission, 231 Ga. 339, 201 S.E.2d 423 (1973).
Public assistance recipients
The due process rights of a public utility are not violated by precluding it from terminating service to recipients of public assistance where payment for the service is recoupable from social welfare authorities.
N.Y.—Barroncini v. Shang, 77 A.D.2d 803, 430 N.Y.S.2d 752 (4th Dep't 1980).

4 U.S.—Otter Tail Power Co. v. Federal Power Commission, 429 F.2d 232 (8th Cir. 1970).

5 U.S.—Bridgeport Hydraulic Co. v. Council on Water Co. Lands of State of Conn., 453 F. Supp. 942 (D. Conn. 1977), judgment aff'd, 439 U.S. 999, 99 S. Ct. 606, 58 L. Ed. 2d 674 (1978).

6 U.S.—Duncan's Point Lot Owners Ass'n Inc. v. F.E.R.C., 522 F.3d 371 (D.C. Cir. 2008).

7 U.S.—Union Light, Heat & Power Co. v. Railroad Commission of Commonwealth of Kentucky, 17 F.2d 143 (E.D. Ky. 1926).

8 U.S.—People of State of New York ex rel. New York & Queens Gas Co. v. McCall, 245 U.S. 345, 38 S. Ct. 122, 62 L. Ed. 337 (1917).

9 Ga.—Georgia Public Service Commission v. Georgia Power Co., 182 Ga. 706, 186 S.E. 839 (1936).

10 Ohio—Columbus & Southern Ohio Elec. Co. v. Public Utilities Commission, 64 Ohio St. 2d 175, 18 Ohio Op. 3d 389, 413 N.E.2d 1208 (1980).

11 Pa.—Overlook Development Co. v. Public Service Commission, 306 Pa. 43, 158 A. 869 (1932).

12 Ala.—Alabama Elec. Co-op., Inc. v. Alabama Power Co., 283 Ala. 157, 214 So. 2d 851 (1968).

13 Wis.—Town of Beloit v. Public Service Commission, 34 Wis. 2d 145, 148 N.W.2d 661 (1967).

14 U.S.—Phillips v. Nelson, 108 F.2d 725 (C.C.A. 10th Cir. 1939).
Me.—Application of Casco Castle Co., 141 Me. 222, 42 A.2d 43 (1945).

15 Cal.—Lyon & Hoag v. Railroad Commission, 183 Cal. 145, 190 P. 795, 11 A.L.R. 249 (1920).

16 N.J.—Eastern New Jersey Power Co. v. Board of Public Utility Com'rs, 6 N.J. Misc. 118, 140 A. 258 (Sup. Ct. 1928).
Va.—Clifton Forge-Waynesboro Tel. Co. v. Com. ex rel. Chesapeake & Potomac Tel. Co. of Va., 165 Va. 38, 181 S.E. 439 (1935).

17 Colo.—Town of Fountain v. Public Utilities Commission, 167 Colo. 302, 447 P.2d 527 (1968).
S.C.—Carolina Pipeline Co. v. South Carolina Public Service Commission, 255 S.C. 324, 178 S.E.2d 669 (1971).

18 N.Y.—New York State Elec. & Gas Corp. v. Maltbie, 169 Misc. 144, 7 N.Y.S.2d 235 (Sup 1938).

19 Pa.—Northern Pennsylvania Power Co. v. Pennsylvania Public Utility Commission, 132 Pa. Super. 178, 200 A. 866 (1938), order rev'd on other grounds, 333 Pa. 265, 5 A.2d 133 (1939) (overruled in part by, City of York v. Pennsylvania Public Utility Commission, 449 Pa. 136, 295 A.2d 825 (1972)).

20 Va.—Commonwealth ex rel. City of Portsmouth v. Portsmouth Gas Co., 132 Va. 480, 112 S.E. 792 (1922).
No protected property interest in exclusive franchise
Haw.—Keahole Defense Coalition, Inc. v. Board of Land and Natural Resources, 110 Haw. 419, 134 P.3d 585 (2006), as amended, (May 26, 2006).
N.H.—In re Union Telephone Co., 160 N.H. 309, 999 A.2d 336 (2010).

21 U.S.—Hume-Sinclair Coal Mining Co. v. Nee, 12 F. Supp. 801 (W.D. Mo. 1935).
Vt.—Valcour v. Village of Morrisville, 108 Vt. 242, 184 A. 881 (1936).

22 Ark.—Redfield Tel. Co. v. Arkansas Public Service Commission, 273 Ark. 498, 621 S.W.2d 470 (1981).

23 U.S.—Application of U. S. of America for Order Authorizing Installation of Pen Register or Touch-Tone Decoder and Terminating Trap, 610 F.2d 1148, 58 A.L.R. Fed. 704 (3d Cir. 1979).

24 U.S.—Time Warner Telecom, Inc. v. F.C.C., 507 F.3d 205 (3d Cir. 2007) (additionally, the order imposed a one-year transition period and required LECs to provide both the customer and the FCC with advance notice of any discontinuance of service).

25 U.S.—Southern Bell Tel. & Tel. Co. v. Town of Calhoun, 287 F. 381 (W.D. S.C. 1923).
Neb.—Blackledge v. Farmers' Independent Tel. Co. of Red Cloud, 105 Neb. 713, 181 N.W. 709, 16 A.L.R. 343 (1921).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

L. Private Corporations and Carriers

2. Carriers

b. Particular Types of Carriers

§ 2282. Public utilities—Service termination of customer

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 4370 to 4373

The termination of service to a customer by a public utility, which has state approval, requires compliance with procedural due process.

Procedural due process must be accorded to a customer of a public utility whose service is subject to termination for nonpayment of charges claimed to be due where the utility service constitutes a property interest[1] under state law[2] and where its termination by a public utility, under specified circumstances, has state approval.[3] On the other hand, procedural due process rights are not applicable to a utility service termination where the state is found to be not sufficiently connected with the termination.[4]

Where the Due Process Clause of the Fourteenth Amendment has been found to be applicable to utility service terminations, public utilities have been required to provide their consumers with notice,[5] at a meaningful time,[6] appraising the consumer of the reasons for the termination[7] and of the availability of administrative procedures to challenge it.[8] Public utilities have also been required to give a consumer whose service is subject to termination an opportunity to be heard,[9] prior to the service

termination,[10] where it is claimed by the consumer that the utility charges are improper[11] or that the termination is otherwise mistaken.[12]

However, it has also been held that due process does not require that a consumer be afforded a hearing before a utility service is discontinued for nonpayment of charges,[13] where adequate notice is given,[14] and where a hearing is provided, at the request of the consumer, after the termination.[15] Furthermore, failure to give written notice prior to termination of service and to advise of the right of appeal does not violate the due process of a person with no entitlement to the service.[16]

Tenants, as the actual users of a municipal utility service, have been held to be entitled to procedural due process prior to the termination of their service[17] irrespective of a lack of "privity" between the user and the provider of the service,[18] but there is contrary authority to the effect that a tenant is not deprived of due process by a utility service termination without notice where the tenant's claim of entitlement to a utility service has no contractual or statutory basis.[19] In any case, due process is violated by a termination of service to tenants who agree to be responsible for their utility charges where the termination is due to arrearages incurred by former tenants.[20]

Due process is not violated by a termination, after warning, of a utility service due to its continued improper use.[21]

Footnotes

1 U.S.—Dawes v. Philadelphia Gas Commission, 421 F. Supp. 806 (E.D. Pa. 1976); Bradford v. Edelstein, 467 F. Supp. 1361 (S.D. Tex. 1979).

2 U.S.—Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978).

3 U.S.—Lucas v. Wisconsin Elec. Power Co., 466 F.2d 638 (7th Cir. 1972); Bradford v. Edelstein, 467 F. Supp. 1361 (S.D. Tex. 1979).
N.Y.—Levine v. Long Island Lighting Co., 76 Misc. 2d 247, 349 N.Y.S.2d 963 (Sup 1973).

4 U.S.—Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S. Ct. 449, 42 L. Ed. 2d 477 (1974); Teleco, Inc. v. Southwestern Bell Tel. Co., 511 F.2d 949 (10th Cir. 1975).

5 U.S.—Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978); Myers v. City of Alcoa, 752 F.2d 196 (6th Cir. 1985); Bronson v. Consolidated Edison Co. of New York, Inc., 350 F. Supp. 443 (S.D. N.Y. 1972).
N.Y.—Turner v. Rochester Gas & Elec. Corp., 74 Misc. 2d 745, 345 N.Y.S.2d 421 (Sup 1973).

6 U.S.—Bradford v. Edelstein, 467 F. Supp. 1361 (S.D. Tex. 1979).

7 U.S.—Limuel v. Southern Union Gas Co., 378 F. Supp. 964 (W.D. Tex. 1974).
Colo.—Denver Welfare Rights Organization v. Public Utilities Commission, 190 Colo. 329, 547 P.2d 239 (1976).

8 U.S.—Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978); Heuser v. Johnson, 189 F. Supp. 2d 1250 (D.N.M. 2001).

9 U.S.—Bronson v. Consolidated Edison Co. of New York, Inc., 350 F. Supp. 443 (S.D. N.Y. 1972); Bradford v. Edelstein, 467 F. Supp. 1361 (S.D. Tex. 1979).
Colo.—Denver Welfare Rights Organization v. Public Utilities Commission, 190 Colo. 329, 547 P.2d 239 (1976).

10 U.S.—Center for United Labor Action v. Consolidated Edison Co., 376 F. Supp. 699 (S.D. N.Y. 1974); Dawes v. Philadelphia Gas Commission, 421 F. Supp. 806 (E.D. Pa. 1976).
N.Y.—Levine v. Long Island Lighting Co., 76 Misc. 2d 247, 349 N.Y.S.2d 963 (Sup 1973).

11 U.S.—Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978).

12 U.S.—Bradford v. Edelstein, 467 F. Supp. 1361 (S.D. Tex. 1979).

13 U.S.—Lucas v. Wisconsin Elec. Power Co., 466 F.2d 638 (7th Cir. 1972).

Colo.—Denver Welfare Rights Organization v. Public Utilities Commission, 190 Colo. 329, 547 P.2d 239 (1976).

N.Y.—Goldenthal v. New York Tel. Co., 68 Misc. 2d 749, 327 N.Y.S.2d 732 (Sup 1972), order aff'd, 40 A.D.2d 825, 337 N.Y.S.2d 495 (2d Dep't 1972).

14 U.S.—Tollett v. Laman, 497 F.2d 1231 (8th Cir. 1974).

D.C.—Jackson v. U. S., 385 A.2d 786 (D.C. 1978).

15 Colo.—Denver Welfare Rights Organization v. Public Utilities Commission, 190 Colo. 329, 547 P.2d 239 (1976).

16 U.S.—Hendrickson v. Philadelphia Gas Works, 672 F. Supp. 823 (E.D. Pa. 1987).

17 U.S.—Davis v. Weir, 497 F.2d 139, 18 Fed. R. Serv. 2d 1497 (5th Cir. 1974); Lamb v. Hamblin, 57 F.R.D. 58 (D. Minn. 1972).

18 U.S.—Davis v. Weir, 328 F. Supp. 317 (N.D. Ga. 1971).

19 U.S.—Midkiff v. Adams County Regional Water District, 409 F.3d 758, 2005 FED App. 0226P (6th Cir. 2005) (applying Ohio law regarding water service); Sterling v. Village of Maywood, 579 F.2d 1350 (7th Cir. 1978).

20 Or.—Oliver v. Hyle, 14 Or. App. 302, 513 P.2d 806 (1973).

21 U.S.—Occhino v. Northwestern Bell Tel. Co., 675 F.2d 220 (8th Cir. 1982).

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